



**CITY COUNCIL**  
**Regular Meeting – April 22, 2019 6:00 p.m.**  
**Council Chambers**

**PROCLAMATIONS**

- ◆ Arbor Day
- ◆ Older Americans' Month

**PRESENTATIONS**

- ◆ UES Fourth of July Donation, Lisa Oxendine and Ruth Carpenter
- ◆ Vault 6936 Robotics Team

- I. CALL TO ORDER
- II. ROLL CALL
- III. PLEDGE AND PRAYER/MOMENT OF SILENCE – Mayor Stone
- IV. APPROVAL OF AGENDA
- V. APPROVAL OF MINUTES
  - A. March 25, 2019 Regular Meeting
  - B. April 8, 2019 Regular Meeting
- VI. ORDINANCES, RESOLUTIONS AND PUDS
  - A. Resolution 19-26 Authorizing City Manager to sign Fraternal Order of Police Agreements
  - B. Resolution 19-27 Community Reinvestment Act (CRA) Affirmation
  - C. Resolution 19-28 PACE (Property Assessed Clean Energy) Resolution of Necessity
  - D. Ordinance 19-04 PACE (Property Assessed Clean Energy) Ordinance to Proceed (First Reading) (Adopt as Emergency on Third Reading)
  - E. Ordinance 19-05 PACE (Property Assessed Clean Energy) Levying Assessments (First Reading) (Adopt as Emergency on Third Reading)
- VII. DECISION ITEMS
  - A. Board Appointments - CRA
- VIII. COUNCIL TIME
- IX. MAYOR'S REPORT
- X. CITY MANAGER'S REPORT
- XI. CITIZEN COMMENTS
- XII. ADJOURNMENT

BEAVERCREEK CITY COUNCIL  
REGULAR MEETING March 25, 2019 6:00 p.m.

**PROCLAMATIONS**

- ◆ Volunteer Month, Eric Corbit, Chair, Parks, Recreation & Culture Board

**PRESENTATIONS**

- ◆ Safety Town Presentation, Doug Musser, General Manager, Tobias Funeral Home

**CALL TO ORDER**

Mayor Stone called the meeting to order followed by roll call

**PRESENT:** Council Member Curran, Council Member Litteral, Council Member Rushing, Council Member Vann, Vice Mayor Garcia, Mayor Stone

**ABSENT:** Council Member Upton

Council Member Litteral **MOVED** to excuse Council Member Upton, seconded by Council Member Curran. Motion **PASSED** by majority voice vote

**ALSO IN ATTENDANCE:** Jill Bissinger, Human Resources, Randy Burkett, City Planner; Dennis Evers, Chief of Police; Kim Farrell, Recreation Superintendent; Jeff Fiorita, Captain, Beavercreek Police Department; Steve Klick, Golf Course General Manager; Bill Kucera, Financial Administrative Services Director; Pete Landrum, City Manager; Jeff McGrath, Planning & Development Director; Steve McHugh, Legal Counsel; Dianne Miscisin, Clerk of Council; Jeff Moorman, City Engineer

**PLEDGE**

Council Member Vann led the pledge and a prayer.

**APPROVAL OF AGENDA**

Council Member Litteral **MOVED** to approve the agenda, seconded by Council Member Rushing. Motion **PASSED** by majority voice vote.

**APPROVAL OF MINUTES**

Council Member Curran **MOVED** to approve the February 25, 2019 Regular Meeting Minutes, seconded by Vice Mayor Garcia. Motion **PASSED** by majority voice vote. (Council Member Litteral abstained)

Council Member Litteral **MOVED** to approve the March 11, 2019 Regular Meeting Minutes, seconded by Vice Mayor Garcia. Motion **PASSED** by majority voice vote. (Mayor Stone abstained)

**PUBLIC HEARING – PUD 18-4 SSP #1 Indian Ripple Retail**

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Clerk Miscisin read an application filed by YOLO Development, 3500 Pentagon Blvd., Ste. 500, Beavercreek, OH 45431. The application requests approval of a specific site plan to allow for the development of a 9,800 square foot retail building on 1.25 acres of land. The property is located on the northeast corner of Harbert Drive and Indian Ripple Road. The property is further described as Book 3, Page 19, Parcel 95 on the Greene County Property Tax Atlas.

#### Applicant Presentation

John Kopilchack, YOLO Development, 3500 Pentagon Blvd., Beavercreek, Ohio  
Mr. Kopilchack said this was rezoned earlier in the year and said the first building was already 50% leased. It was hoped to start building as soon as they receive approval. He said this building would be a mix of medical, retail and office.

#### Staff Presentation

Mr. McGrath summarized the staff report dated March 21, 2019 stating the applicant was requesting approval of a specific site plan to allow for the construction of an approximately 8,700 square foot, multi-tenant retail building on 1.5 acres. He said this was the first phase of a two phase project. He reviewed the location, surrounding zoning, the proposed site plan, permitted uses, access points, parking, elevations, lighting, landscaping, sidewalks, dentation and signage. Planning Commission and staff recommended approval of this request.

#### Public Input

There being no public input, public input was closed.

#### Council Input

Council Member Litteral thanked the applicant and thought it was a great asset to that area.

Council Member Vann asked which elevation was on Indian Ripple and Harbart. Mr. McGrath reviewed the information. Council Member Vann asked the width of the parking spaces. Mr. McGrath believe they were nine feet by eighteen feet.

Council Member Curran asked about the storm water retention. Mr. McGrath said storm water management was subject to approval by the engineering before being issued a permit. He said at this point they do not get fully into those details because they still have to fully engineer the site.

#### Motion

Council Member Litteral moved for the purpose of taking administrative action, approval of a Specific Site Plan for Indian Ripple Retail, on the basis that City Council finds the facts submitted with the application and accompanying

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materials, and modifications, amendments and supplementary conditions satisfy the standards and criteria for a Specific Site Plan as per §158.066 of the Zoning Code. Supplementary conditions required of this approval shall be as follows. Council Member Litteral further moved that this motion with all conditions be fully recorded in the minutes of this Council meeting.

1. The approved site plan shall be the plans dated "Received February 07, 2019" except as modified herein.
2. The approved architecturalelevations shall be the plans dated "Received March 1, 2019" except as modified herein.
3. A PUD Agreement must be signed by the owner and a bond or letter of credit for the site landscaping must be submitted prior to issuance of a zoning permit for any portion of the project for the purpose, but not for the sole purpose, of insuring the installation of landscaping. Said bond or letter of credit must meet the requirements of the City's landscaping and screening regulations.
4. The final landscape plan shall be reviewed and approved by the Planning Department prior to the release of a zoning permit for the building.
5. Perpetual maintenance of landscaping shall be provided and any dead or diseased materials shall be removed and replaced with similar types, species and sizes as originally installed, within three months weather permitting.
6. Any portion of the site disturbed by grading or by the removal of former structures and/or pervious surfaces and on which no construction occurs within three months after completion of the site grading, shall be planted with appropriate ground cover and properly maintained. Such areas shall be shown as part of the final landscape plan.
7. Debris and trash shall be routinely collected by the owner from the parking lot and grounds of all areas of the project including the storm drainage facilities. The City reserves the right to require more frequent collection as necessary.
8. All building mechanical equipment is to be screened from all directions with architectural features (roof forms or parapet walls) on each building. Metal screening will not be accepted. Pad mounted equipment must be screened with landscaping and/or masonry walls and shall not be visible to the public.

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9. Gutters and downspouts shall not be visible on any elevation of the building. They shall be internally mounted.

10. Design elements consistent with the front and side elevations shall be continued to the rear of the building and final plans for all elevations shall be reviewed and approved by the Planning Department prior to the release of a zoning permit.

11. Prior to the issuance of a zoning permit, final cut sheet details and photometric plans for lighting of the site shall be reviewed and approved by the Planning Department. Maximum mounting height for any parking fixture shall be 20 feet, and no pole shall be located in the paved area of the parking field. All light fixtures and related illumination of the site must meet the conditions outlined in the Zoning Code.

12. All man-doors, service doors and loading dock doors shall be painted to match the color of the building as to blend in with the proposed façade.

13. Any split-face block, EIFS, or concrete masonry unit block will be of integral color and not a material that is painted on the outside only.

14. The existing ground sign shall be removed prior to the issuance of any tenant permits.

15. The ground sign shall be a maximum of 8 feet tall and have a maximum 56 square feet per sign face. The final design and location shall be subject to review and approval by the Planning Department prior to release of a permit for the sign.

16. The ground sign shall be set in a minimum one-foot masonry base that shall be constructed of the same material as used to construct the principal structure. The framing shall be gray or silver, instead of brown, and all panels will be have the same background color.

17. Wall signage shall comply with the Zoning Code for B-3 districts. The applicant shall be allowed to have one additional wall sign, on the eastern elevation, the final location and size to be reviewed and approved by the Planning Department prior to the issuance of a sign permit.

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18. All wall signs shall be individually mounted channel letters or panels. No raceways shall be permitted.

19. No temporary signs shall be permitted within this development.

20. All trash collection containers shall be screened from view and enclosed within a permanent dumpster enclosure or stored completely within the building. Any dumpster enclosure shall be constructed of the same materials as the primary building and have a closable, lockable gate. The final design of the dumpster enclosure shall be reviewed and approved by the Planning and Zoning Department prior to the issuance of any zoning permits.

21. Sidewalk along Harbert drive shall be shown on the permitting plans and shall be installed per the specifications of the Engineering Department.

22. A sidewalk connection and crosswalk shall be required from the building to future Indian Ripple Road sidewalk.

Seconded by Council Member Vann. Motion PASSED by majority voice vote.

**PUBLIC HEARING – PUD 18-2 SSP #1 Holiday Inn Express**

Clerk Miscisin read an application filed by Miami Valley Hospitality LLC, 2919 Ambrosia Lane, Xenia, OH 45385. The application requests approval of a specific site plan to allow for the development of a 4-story, 87 quest room Holiday Inn Express on 2.402 acres of land. The property is located on the west side of Esquire Drive approximately 250 feet north of the intersection of Lakeview Drive and Esquire Drive further described as Book 4, Page 5, Parcel 104 on the Greene County Property Tax Atlas.

**Applicant Presentation**

Mitch Cosler, 545 Hilltop Rd, Beavercreek, Ohio

Mr. Cosler reviewed some of the building details of the Holiday Inn Express. He said all of the conditions were being dealt with and he would be available for questions.

**Staff Presentation**

Mr. McGrath summarized the staff report dated March 20, 2019 stating the applicant was requesting approval of a specific site plan for the construction of 4-story, 87 room hotel, to be located on 2.402 acres. He reviewed the location, surrounding zoning, the proposed site plan, access, parking, setbacks, building

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elevation, landscaping, lighting, and signage. Planning Commission and staff recommended approval of this request.

Public Input

There being no public input, public input was closed.

Council Input

Council Member Vann said she like the opportunity for another hotel.

Council Member Litteral great opportunity for Beaver creek.

Vice Mayor Garcia thought it was a great location.

Motion

Council Member Curran moved for the purpose of taking administrative action, approval of a Specific Site Plan for Holiday Inn Express, on the basis that City Council finds the facts submitted with the application and accompanying materials, and modifications, amendments and supplementary conditions satisfy the standards and criteria for a Specific Site Plan as per §158.066 of the Zoning Code. Supplementary conditions required of this approval shall be as follows. Council Member Curran further moved that this motion with all conditions be fully recorded in the minutes of this Council meeting.

1. The approved site plans for this development shall be the plans stamped "Received February 27, 2019", except as modified herein.
2. The approved architectural plans for this development shall be the plans stamped "Received February 27, 2019", except as modified herein.
3. A detailed landscape plan shall be reviewed and approved by the Planning and Development Department prior to the execution of the required PUD Agreement and the release of any zoning permit for this project. Additional landscaping along the southern property line shall be included, as depicted in Exhibit A.
4. Perpetual maintenance of landscaping shall be provided and any dead or diseased materials shall be removed and replaced with similar types, species and sizes as originally planted, within three months, weather permitting.

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5. Any portion of the site disturbed by grading, and on which no construction occurs within three months after completion of the site grading, shall be planted with appropriate ground cover free of noxious weeds and construction debris and shall be properly maintained.
6. A PUD agreement must be signed by the owner and a bond or letter of credit for the required site landscaping must be submitted prior to the release of a zoning permit for any portion of the project for the purpose, but not for the sole purpose, of insuring the installation of landscaping. Said bond or letter of credit must meet the requirements of the City's landscaping and screening regulations.
7. All trash collection containers shall be screened from view and enclosed within a permanent dumpster enclosure or stored completely within the building. Any future dumpster enclosure shall be constructed of materials consistent with the principle building. The final design of the enclosure shall be reviewed and approved by the Planning and Development Department prior to the issuance of any zoning permits.
8. Ground signage shall adhere to the regulations set forth in the Zoning Code for B-3 districts. The final design and location shall be subject to review and approval by the Planning and Development Department prior to a release of a permit for the sign. If constructed, the ground sign shall be set in a base that shall be constructed of materials compatible with the materials that are used to construct the new principal structure, to be reviewed and approved by the Planning and Development Department.
9. Wall signs, shall be permitted on the east and north architectural elevations, as shown on the architectural elevations (broken into a 36 square-foot logo sign, and a 60 square-foot "Holiday Inn Express & Suite" sign). No wall signs shall be permitted on the west elevation of the building. In no case, shall wall signs shall be permitted to project above the roofline of the building.
10. Wall signs shall be individually mounted channel letters. The use of raceways or painting of letters on the wall shall be prohibited.
11. Prior to the issuance of a zoning permit, final cut sheet details and photometric plans for lighting of the site shall be reviewed and approved



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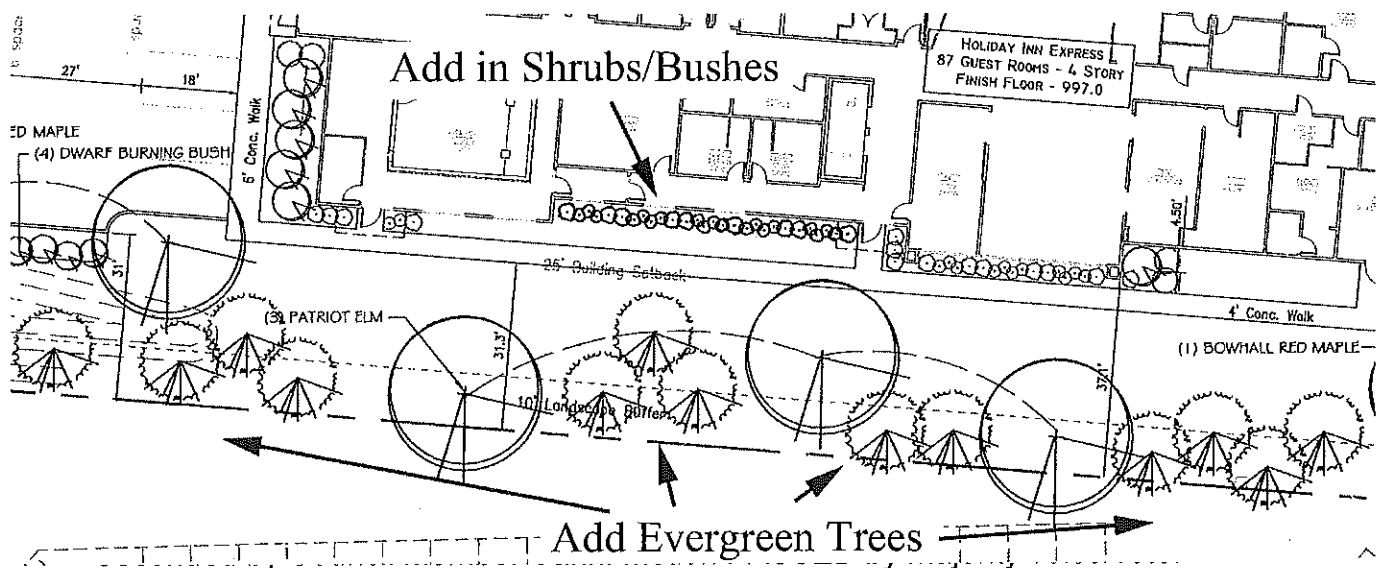
by the Planning Department. Maximum mounting height for any parking fixture shall be 16 feet (including any concrete base), and no pole shall be located in the paved area of the parking field. All light fixtures and related illumination of the site must meet the conditions outlined in the Zoning Code. Lights in the parking lot shall be reduced to no greater than 25 percent illumination level within one hour of closing.

12. The building exterior shall not be painted or altered in any way that varies from the approved elevations unless otherwise approved by the Planning and Development Department or, if required, by the City Council and/or Planning Commission.
13. No portion of the building may be occupied for the first time or reoccupied later until and unless an application of a Certificate of Use Compliance has been submitted to the City by the property owner or by the prospective occupant. No such occupancy may occur until the application of Certificate of Use Compliance has been approved and issued by the City.
14. All concerns of the City Engineer, Fire Department, Sanitary Engineer and the Planning and Development Department shall be addressed prior to the issuance of a permit for the project.
15. All building mechanical equipment is to be screened from all directions with architectural features (roof forms or parapet walls). Metal screening will not be accepted. Pad mounted equipment must be screened with landscaping and/or masonry walls and shall not be visible to the public.
16. Debris and trash shall be routinely collected by the owner from the parking lot and grounds of all areas of the project. The City reserves the right to require more frequent collection as necessary.
17. Impact fees must be paid for this project. The required impact fee will be reviewed and approved by the City Engineer and the impact fee must be paid prior to the release of the zoning permit.
18. Downspouts shall be internally mounted and shall not be visible on the exterior of the building.

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19. Exterior construction hours shall be limited to 7:00 AM to 7:00 PM, Monday thru Saturday.
20. The sidewalk along the frontage of this property shall be repaired.
21. Prior to the grading of the site, the applicant shall install a plastic orange fence parallel to the western property 20 feet from the western property line to designate area to be undisturbed by construction to ensure the protection of existing trees and groundcover. Immediately upon completion of the project, the plastic fence shall be removed.
22. The EIFS designated EIFS-RR and EIFS-DB shall be textured in a standard size brick (3-5/8" x 8") pattern.
23. The storage area shown on the site plan shall be completely contained within the dumpster enclosure, not visible from ordinary public view.

### EXHIBIT A



Seconded by Council Member Vann. Motion PASSED by majority voice vote.

### ORDINANCES, RESOLUTIONS AND PUDS

#### Ordinance 19-02 Council Compensation (Second Reading)

Clerk Miscisin read an Ordinance increasing the annual salary of the members of council to twelve thousand dollars (\$12,000.00) effective January 1, 2020 per Charter Section 4.10 Compensation.

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Harold Lewis, 1423 Town Hall Road, Beavercreek, Ohio

Mr. Lewis questioned why the increase was 100%. He said the only reason he heard was to be able to participate in a state retirement program. He said he didn't even know they were in a retirement program and questioned why not social security. He said you are all volunteers. He wasn't saying Council didn't deserve an increase but not 100%. He said you can get reimbursed for expenses. He said there were levies coming up and this was a poor time to get a 100% pay increase. He said the charter says you have to pass a resolution to receive reimbursement of expenses and he hadn't seen a resolution yet. He said it was never done.

There being no more public input, the public hearing was closed.

Council Member Litteral said public employees come in many way shapes and forms including elected officials. She said this increase did not affect her because she was termed out. She thought Council did deserve a slight increase. She said one of things people do not realize is there is a lot of driving and a lot more to this job than people think. She believed there was a need for an increase and thought \$8500 was acceptable. She felt the voters should be the ones to give elected officials raises. She wanted the residents to know there was a lot more that goes into this position than showing up to meetings.

Council Member Rushing asked if they could amend the Ordinance at the second reading if Council so desired or would it be viewed as a material difference. Mr. McHugh said in his opinion it would not be a material difference, assuming the motion would be a decrease. Council Member Rushing said they do need to listen to resident comments as well as being as frugal as possible. He said they could entertain a change to the Ordinance to reflect a minimum credit to OPERS without doubling the actual salary. He said the minimum credit to OPERS would be \$660 per month. He said currently the rate is \$500 per month. He was willing to make a motion to increase the salary to \$7,920 annually after discussion. Mr. McHugh recommended to round it up to \$8,000.

Council Member Vann reminded everyone they were the third largest city in the Dayton Metropolitan region. She said Centerville makes \$14,500, Kettering, \$22,980; Miamisburg, \$14,515; Springfield, \$14,330. She said they were a big city, Council was very cautious of the money and did not think it was too much to ask for \$1,000 per month.

Vice Mayor Garcia said she agreed with Council Member Vann and Council Member Rushing. She thought \$12,000 was a lot until it was broken down to

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\$1,000 per month. She said to do some of the things they do as a public servant they have to take time away from their day jobs.

Mayor Stone said it was during his first term on Council when the last increase occurred 20 years ago. He said it went from \$2,000 to \$6,000 which is triple the amount. He said OPERS minimum has increased twice in the last couple of years. He said the township trustees make \$28-30,000 per year. The county commissioners make \$60,000 per year. He said they don't do any more work than they do on Council. He said while this is volunteer there are expenses which cannot be documented most of the time. He said he spends 30-40 hours per week doing this job. He said they lowered the number of signatures required to run for council because they weren't getting anybody to run. He said you can't afford to be on Council at \$6,000 per year. He said he was not stuck on \$12,000 but did not think it unrealistic. He said he was looking at the Council that sits here ten years from now.

Vice Mayor Garcia said no one sitting on this council would be affected. Only those who are re-elected would get the new amount. She said they were thinking of future Councils.

Mr. McHugh addressed the council expenses. He explained that Section 4.10 does provide that Council may adopt Resolutions with respect to receiving expenses. He said the budget appropriation process, Section 10.10 was revised to include a provision stating there was no required Resolution to approve under Section 4.10 if the expenses were approved with the annual appropriations or an amendment. He said all of the expenses approved this year and last year have been expenses appropriated for Council. Therefore, they would fall under Section 10.10 and not Section 4.10.

Mayor Stone said on some of the larger items they have made motions and gave the example of the most recent motion to approve the City Manager and Mayor to attend the DDC Fly-In. He said this was not required because it was appropriated.

Council Member Rushing said he would be more than happy to make a motion to reduce the amount but felt the consensus was to leave it as is. He used the OPERS number because he was comfortable with it.

Vice Mayor Garcia MOVED to amend to amount to \$9000 annually, seconded by Council Member Litteral. Motion was DENIED by a roll call vote of 3-3 (Against-Vann, Curran, Stone)

This Ordinance will move automatically to the Third Reading.

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**Ordinance 19-03** Additional Appropriations

Clerk Miscisin read an Ordinance to approve supplemental appropriations, certify additional revenue and authorize inter-fund transfers for the fiscal year beginning January 1, 2019 and ending December 31, 2019 and to amend Ordinances 18-28, and 19-01.

Mr. Kucera reviewed the appropriations, additional revenue and inter-fund transfers. The funds affected are the General Fund, Golf Course Fund, Street Levy Fund (203), Parks Levy Fund (279) and Regional Emergency Response Team (RERT) (751).

Council Member Rushing said even with these adjustments the fund balance would still meet the 20% fund balance.

Council Member Rushing MOVED to move Ordinance 19-03, seconded by Vice Mayor Garcia. Motion PASSED by a roll call vote of 6-0.

**Resolution 19-22** Authorize Tax Exempt Leasing Agreement

Clerk Miscisin read a Resolution authorizing the City Manager to purchase a Bearcat Armored Vehicle from Lenco on behalf of the Regional Emergency Response Team (RERT), and to enter into a tax-exempt municipal lease financing with U.S. Bancorp Government Leasing and Finance, Inc. to finance the purchase.

Mr. Kucera said we were the lead agency for the Regional Emergency Response Team (RERT). The RERT is replacing the current 1983 armored vehicle with a new Lenco-Bearcat. He said it was the City of Beavercreek's responsibility to execute the purchase agreement and sign the documents for the five year capital lease. He said the city is liable for the lease but there was an agreement with the other members of the RERT stating they will make the required payments over the next five years. The purchase amount was \$248,401 and the lease was through U.S. Bank Corp. The payments would not start until 2020 in the amount of \$18,094 per year per member. He stated this capital lease payment would be paid with state and federal forfeiture money. He said there was no police levy money involved with this organization.

Council Member Curran MOVED to move Resolution 19-22, seconded by Council Member Litteral. Motion PASSED by a majority voice vote.

**Resolution 19-23** Memorandum of Understanding (MOU) with Wright Patterson Air Force Base

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Clerk Miscisin read a Resolution approving and authorizing a new mutual aid agreement between Wright-Patterson Air Force Base, 88<sup>th</sup> Security Forces Squadron and the City of Beavercreek, Ohio.

Chief Evers said he had a Memorandum of Understanding with WPAFB that outlines the procedures when mutual aid assistance is requested by either of the parties. He said this agreement was an update of the current agreement was executed in 2003. He said Mr. McHugh had reviewed the agreement.

Council Member Litteral MOVED to move Resolution 19-23, seconded by Vice Mayor Garcia. Motion PASSED by a majority voice vote.

#### **LIQUOR PERMITS**

##### **El Toro of Beavercreek LLC DBA El Tor Mexican Bar & Grill (New)**

Chief Evers said the Ohio Division of Liquor Control sent notification of a request to transfer a D5I permit from El Toro of Beavercreek LLC DBA El Toro Mexican Bar & Grill, 2420 N. Fairfield Rd., Beavercreek, Ohio 45431... The records checks required by the Ohio Department of Commerce – Division of Liquor Control were conducted on the business officers/shareholders for this application request. Staff recommended this application request move forward with no comment.

Council Member Litteral MOVED to accept without comment, seconded by Vice Mayor Garcia. Motion PASSED by a majority voice vote.

#### **DECISION ITEMS**

##### **Peace Exploratory Committee Liaison**

Mayor Stone said this was discussed at the work session.

Council Member Vann reviewed the history of City of Peace and was being done to reach peace. She said there were currently 238 Cities of Peace around the world at this time. She would like to celebrate the United Nations International World Day of Peace every September. She said they were putting together an exploratory committee to gather ideas and she asked to be recognized as the liaison to the Peace Exploratory Committee.

Council Member Litteral MOVED to recognize Council Member Vann as liaison to the Peace Exploratory Committee, seconded by Vice Mayor Garcia. Motion PASSED by majority voice vote.

#### **COUNCIL TIME**

Council Member Curran attended a Girl Scout event which was very moving.

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Council Member Litteral congratulated staff for the accomplishments for acquiring the Ohio Public Works Grant for Kemp Road. She said the Police and City Hall Open House would be held on May 18<sup>th</sup> from 11:00 a.m. – 2:00 p.m.

Council Member Vann gave examples of what she had done as a council member and events she had participated in.

#### **MAYOR'S REPORT**

Mayor Stone attended the Girl Scout event at Angels Pass. He attend the Air Force Institute of Technology's graduation who was celebration their 100<sup>th</sup> anniversary. He would be attending the Mayor's Alliance meeting in Columbus on Tuesday. He thanked Council Member Vann and Council Member Curran for facilitating the International Officers' visit last week in his absence.

#### **CITY MANAGERS REPORT**

Mr. Landrum said Coffee with a Cop would be held at Starbucks in Kroger on Wednesday, March 27<sup>th</sup> from 7:00 a.m. to 10:00 a.m. The Greene County Sanitary Department would be painting the water tower in Summerfield beginning April 1<sup>st</sup>. The Fourth of July Committee is taking applications for Grant Marshall, Sponsorships and Parade. Please see the city website for applications and more information.

Ms. Bissinger reviewed and highlighted awards and accomplishments of staff members.

Mayor Stone commended everyone for their service and going above and beyond.

#### **CITIZEN COMMENTS**

There being no comments, Citizen Comments was closed.

#### **ADJOURNMENT**

Council Member Litteral MOVED to adjourn the meeting at 7:42 p.m., seconded by Council Member Curran. Motion PASSED by majority voice vote.

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Bob Stone, Mayor

BEAVERCREEK CITY COUNCIL

REGULAR

March 25, 2019

ATTEST:

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Dianne Miscisin  
Clerk of Council  
Cmin032519



BEAVERCREEK CITY COUNCIL  
REGULAR MEETING April 8, 2019 6:00 p.m.

**PROCLAMATIONS**

- ◆ National Public Safety Telecommunicators' Week
- ◆ Autism Awareness Month

**CALL TO ORDER**

Mayor Stone called the meeting to order followed by roll call

PRESENT: Council Member Litteral, Council Member Rushing, Council Member Upton, Council Member Vann, Vice Mayor Garcia, Mayor Stone

ABSENT: Council Member Curran

Council Member Litteral MOVED to excuse Council Member Curran, seconded by Vice Mayor Garcia. Motion PASSED by majority voice vote

ALSO IN ATTENDANCE: Dennis Evers, Chief of Police; Bill Kucera, Financial Administrative Services Director; Pete Landrum, City Manager; Jeff McGrath, Planning & Development Director; Steve McHugh, Legal Counsel; Dianne Miscisin, Clerk of Council; Jeff Moorman, City Engineer; Mike Thonnerieux, Public Administrative Services Director

**PLEDGE**

Vice Mayor Garcia led the pledge and a prayer.

**APPROVAL OF AGENDA**

Council Member Litteral MOVED to approve the agenda, seconded by Council Member Rushing. Motion PASSED by majority voice vote.

**APPROVAL OF MINUTES**

Council Member Litteral MOVED to approve the March 15, 2019 Work Session Minutes, seconded by Council Member Vann. Motion PASSED by majority voice vote.

**PUBLIC HEARING – PUD 18-4 SSP #1 Beaver Creek Business Park**

Clerk Miscisin read an application filed by EDB International Inc., 6375 Shier Ring Road, Ste. F., Dublin, OH 43016. The application requests approval of a specific site plan for 11.82 acres of land to allow for the construction of Phase I, which will consist of approximately 50,000 square feet of self-storage warehouses, and Phase II, which will consist of two office/warehouse buildings totaling 24,000

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square feet south of U.S. 35. The property is further described as Book 6, Page 18, Parcel 55 on the Greene County Property Tax Atlas.

#### Applicant Presentation

Rob Arnold 2753 Scarborough Place, Xenia, OH 45385

Mr. Arnold said this is a difficult piece because of the sewer treatment across the street that presents issues. He said they looked at different kinds of product that would not be impacted by this fact. He said a store and lock is a benign, quiet use along with an office warehouse. He said this was zoned many years back.

#### Staff Presentation

Mr. McGrath summarized the staff report dated April 4, 2019 stating the applicant was requesting approval of a site plan to construct 50,000 square feet of self-storage facilities spread out in eight buildings, a small 800 square foot office for the self-storage units and two, 12,000 square foot office/warehouse buildings on 11.8 acres. He reviewed the location, surrounding zoning, the proposed site plan, access points, elevations, fencing, lighting, and signage. He said this was rezoned in 2006 with a specific site plan approved in 2009. He said this was the exact same site plan that came forward in 2009 with the exception of a redesign of the access points because of the realignment of the roads. He said office/warehouse was unique to Beavercreek and has a high request for. A majority of the property is within the 100-year floodplain and the city's requirements are more stringent than FEMA's one foot requirement. He said this project was showing three or four feet above the 100-year base flood elevation. He said the city requires two feet above the base flood elevation. Planning Commission and staff recommended approval of this request.

#### Public Input

Susan Marticello, 270 Rebel Ct., Beavercreek, Ohio

Ms. Marticello stated she was representing 25 families. She said she was a concerned citizen, property owner and a Beavercreek tax payer. She said she has neighbors that think this is a done deal and there was no point in talking with council tonight. She understood this was Mr. Arnold's land and had the right to develop it. She would love for it not to get developed because she loves the natural wooded area. She said she was not happy with the business park but could live with it. She was opposed with the storage units and passed out a map displaying a map depicting five storage units within a 2.5 mile radius of the site plan. She said none of them are full and therefore there was no need more storage units. She had a concern for the lighting. She said there would be negative impact to the neighbors' properties. She said there was also not much of a buffer.

There being no more public input, public input was closed.

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#### Council Input

Council Member Vann asked about the 100-year floodplain and why it was important to respect the 100-year floodplain and questioned if this should even being developed. She said the reason the federal government forced us to have floodplain management was so the city could make sure to provide ecological systems for success of the whole community. She said if we build within that it was a concern to her.

Mr. McGrath said they take that into very serious consideration. He said the city has a floodplain administrator to ensure all the FEMA rules and regulations are followed. He said the federal government has established a minimum requirement for the criteria for developing in a floodplain. He said the biggest thing was to administer the FEMA floodplain regulations to keep everybody who does have a property in the floodplain eligible for subsidized flood insurance through the federal government. He said everything on this site would be FEMA certified which requires pre-development surveys of the property to get the topography and then there would be pro-development survey to ensure that it was developed as it was purposed on the plans. He said there was a federally regulated stream that runs through the property that the owner would not be able to impact. He said the only thing that would go over the stream would be the access drive but they would have to build it in accordance with FEMA regulations which was similar to what the city has to do when building bridges over the Little Miami River.

Council Vann asked to see a drawing depicting where the stream was in relation to the buildings. She said she was sensitive to the fact that if there was a disaster it would be taxpayer money that would pay for it. She was glad this was thought out thoroughly and the consequences of the floodplain. Council Member Vann asked Mr. Arnold about landscaping. Mr. Arnold said they would be keeping as much of the natural look as possible.

Council Member Upton said this was rezoned a number of years ago asked when that was. Mr. McGrath said it was initiated in 2006 and adopted in May 2007. He said there were not expirations on PUD rezoning. Council Member Upton asked if there had been any additional interest in this plot of land. Mr. McGrath said the Arnold's have owned this land the whole time. He did say this was back again because of a five year expiration date on specific site plans. He said in 2009 this was changed to three years. Council Member Upton said he was encouraged that there was some thought in utilizing this area.

Mayor Stone said this is pretty much what was approved before. He said it was always a tough one when you're trying to building between commercial and

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residential when you have a sewage treatment plant on one side of the street and this piece of land on the other. There are very limited uses for this type of land. He said residential does not want to up against the sewage treatment plant as well as most retail.

Council Member Vann asked about the setback from the residents. Mr. McGrath reviewed the setbacks on a one of the drawings.

Council Member Litteral asked Mr. Arnold if they had spoken with the neighbors. Mr. Arnold said no. He said if it was residential there would be lighting also. It's a lot more benign than residential and would be more natural.

#### Motion

Council Member Upton moved for the purpose of taking administrative action, approval of a Specific Site Plan for Beaver Creek Retail Campus, on the basis that City Council finds the facts submitted with the application and accompanying materials, and modifications, amendments and supplementary conditions satisfy the standards and criteria for a Specific Site Plan as per §158.066 of the Zoning Code. Supplementary conditions required of this approval shall be as follows. Council Member Upton further moved that this motion with all conditions be fully recorded in the minutes of this Council meeting.

1. The approved site and landscape plans shall be the plans dated "Received February 27, 2019" except as modified herein.
2. The approved elevations shall be the architectural drawings dated "Received February 27, 2019" except as modified herein.
3. A PUD Agreement must be signed by the owner and a bond or letter of credit must be submitted prior to issuance of a zoning permit for any portion of the project for the purpose, but not for the sole purpose, of insuring the installation of landscaping. Said bond or letter of credit must meet the requirements of the Planning and Zoning Department.
4. Perpetual maintenance of landscaping shall be provided and any dead or diseased materials shall be removed and replaced with similar types, species and sizes as originally planted, within three months, weather permitting.
5. The final landscape plans shall include landscaping around the base of each of the ground signs. The final design of the landscaping shall be

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reviewed and approved by the Planning Department prior to the approval of the Landscape Plan.

6. The final Landscape plan shall include shade trees along both sides of Business Campus Drive, and shrubs in front of the handicap parking spaces for the mini-storage office building.
7. The light fixtures and poles to be used within this development, along with a final photometric plan showing foot-candles to the property lines shall be reviewed and approved by the Planning Department prior to the issuance of a zoning permit for the building. All pole mounted light fixtures shall be located in terminal, interior or perimeter landscape islands. The maximum mounting height for pole mounted fixtures shall be 16 feet in Phase 1 and 24 feet in Phase 2.
8. A Final Subdivision shall be approved by the Planning Commission and all necessary bonds and fees shall be paid prior to the release of a zoning permit for the any building within the PUD.
9. Business Campus Drive shall be constructed from Factory Road to Alpha-Bellbrook Road, in its entirety as part of Phase 1 and 2 and shall be bonded as part of the Final Subdivision.
10. Debris and trash shall be routinely collected by the owner from the parking lot and grounds of all areas of the project including storm drainage facilities. The City reserves the right to require more frequent collection as deemed necessary.
11. The building exterior shall not be painted or altered in any way that varies from the approved elevations unless otherwise approved by the Planning Department or, if required, by the City Council and/or Planning Commission.
12. The final color of all man, service, loading dock, overhead doors and garage doors shall be approved by the Planning Department prior to the release of a zoning permit.
13. All trash collection containers shall be enclosed within a building or screened from view through the use of a permanent dumpster enclosure designed to match the building by using the same materials as those found on the building. The final design shall be reviewed and approved by the Planning Department prior to the issuance of a zoning permit.

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14. All ground mounted mechanical equipment shall be screened from view per the review and approval of the Planning Department.
15. All concerns of the City Engineer, Fire Department, Sanitary Engineer, Planning Department and the Beavercreek Police Department shall be addressed prior to the issuance of a permit for any building in this project.
16. All stormwater calculations and detention/retention plans shall be approved by the Engineering Department prior to the release of a zoning permit.
17. Aeration and water circulation devices and/or fountains are required for the retention pond(s) and shall be maintained by the owner, developer, or the condo association in perpetuity.
18. All areas disturbed as part of the construction that are not part of the Phases I and II shall be restored, seeded and maintained and shall be free of noxious weeds and construction debris, within three months of the completion of construction, or sooner, as required by the Planning and Development Department.
19. Downspouts shall be internally mounted and shall not be visible on the exterior of the structure or on any structure within this development except as specifically approved by the Planning Commission and/or Planning Department.
20. Material and color samples shall be submitted to the Planning Department for review and approved prior to the issuance of a zoning permit, to ensure that the brick and split face block are carried to all four elevations of every building. The final color of the brick used on the building shall be approved by the Planning Department prior to the issuance of a zoning permit for the building.
21. The final design of all guardrails to be installed in the PUD shall be submitted to the Planning Department for review and approved prior to the issuance of a zoning permit.
22. Construction hours for this PUD shall be limited to 7:00 AM to 7:00 PM, Monday thru Saturday.
23. Should any grading for the access points along Alpha-Bellbrook Road or Factory Road be on private property not owned by the applicant, the applicant shall be required to provide proof of permission to perform grading

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by the appropriate landowner to the Planning Department prior to the issuance of a zoning permit.

24. Four interior parking lot islands shall be added as shown on **Exhibit 1**. Each island shall include a shade tree and ground cover, to be included on the final landscape plan prior to the approval of the landscape plan.
25. Prior to the occupancy of any of the mini-storage buildings, the applicant shall submit and receive approval of a Certificate of Use Compliance. Prior to the occupancy of either of the Office/Warehouse Buildings, the applicant shall submit and receive approval of a Certificate of Use Compliance for each of the buildings.
26. Prior to the issuance of a Certificate of Use Compliance for the mini-storage units, the applicant shall submit a security plan for the mini-storage units. The security plan shall detail the type of the required access restriction being used (i.e. security cards, fobs or PIN numbers) and the location of all security cameras located within Phase I. The mini-store and lock units within Phase I of this development shall be properly secured to the satisfaction of the Police Department at the specific site plan stage and prior to the issuance of a zoning permit and shall provide video surveillance and keypad or card reader secured entrances.
27. All buildings shall incorporate four-sided architecture and shall have no apparent rear.
28. The final design of the rear and side elevations of the mini-storage office building shall be reviewed and approved by the Planning Department prior to the release of a permit. The design shall incorporate the brick walls, with split-face block base, the same as with the other buildings in the development.
29. The two handicap parking spaces to the south of the self-storage warehouse office building shall be moved outside of the 100-foot building and parking setback along Factory Road.
30. The brick used to construct the ground signs shall be the same brick used to construct the buildings.
31. Prior to the release of a zoning permit, there shall be a traffic study performed, and provided to the City Engineer for approval, to ensure that

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approved roadway improvements accommodate the impact this project will have on traffic patterns.

32. The ground sign located at Alpha-Bellbrook Road shall incorporate the same column and cap design as shown on the ground sign to be located at Factory Road, as shown in **Exhibit 2**. The final design shall be reviewed and approved by the Planning Department prior to the issuance of a sign permit for either sign.
33. There shall be no outdoor storage, display, rental or sales at any time of automobiles, recreational vehicles, material, equipment, machinery or merchandise at any time unless approved by the Planning Commission.
34. All floodplain requirements and permits must be completed and approved by FEMA and the Beaver Creek Planning and Development Department prior to the release of a zoning permit for any building. A HEC study shall be conducted and provided to the City Engineer prior to the release of a zoning permit.

Seconded by Council Member Litteral. Motion PASSED by majority voice vote.

#### **ORDINANCES, RESOLUTIONS AND PUDS**

##### **Ordinance 19-02 Council Compensation (Third Reading)**

Clerk Miscisin read an Ordinance increasing the annual salary of the members of council to twelve thousand dollars (\$12,000.00) effective January 1, 2020 per Charter Section 4.10 Compensation.

Council Member Upton said he was absent from the last meeting but was encouraged by the dialogue.

Mayor Stone said he was prepared to pass the gavel to make a motion

Council Member Vann said she was still agreeable to leave it where it is as it only happens every 20 years. She wanted people to realize the importance of the job

Council Member Litteral felt a 100% increase was a little much but Council should have more compensation. She agreed with both Council Member Vann and Vice Mayor Garcia because people are busy and want them to be engaged and involved. Council Member Litteral said there is not enough incentive to do this job. You are busy as there are lots of things going on in the community and many engagements that you have to attend on behalf of Council. She knew it had been 20 years but at the same time we have a Parks and Street Levy and lots of other



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things going on in the community. They need to look at all of those pieces at the same time.

Mayor Stone said there was discussion of the charter review committee looking at it as a charter review change every five years.

Council Member Vann MOVED to approve Ordinance 19-03. Motion FAILED for lack of a second.

Mayor Stone PASSED the gavel to Vice Mayor Stone

Mayor Stone MOVED to amend Ordinance 19-03 by changing the amount to \$10,800, seconded by Council Member Rushing. Motion PASSED by majority voice vote. (Against – Litteral)

Council Member Vann MOVED to approve Ordinance 19-03 as amended, seconded by Mayor Stone. Motion PASSED by majority voice vote. (Against - Litteral)

Vice Mayor Garcia passed the gavel to Mayor Stone.

**Resolution 19-24** CDBG Funding Application

Clerk Miscisin read a Resolution to authorize the submittal of funding application for Community Development Block Grant (CDBG) Funding through the Greene County Department of Development.

Mr. Moorman said they were informed the Greene County Commissioners were accepting applications for the Community Block Grant Funding. He said in reviewing the restrictions on the grant money he said they were recommending one application. He said the application would be for the lighting and sidewalk improvements associated with the new parking facility along the north side of Southview Street to service the Senior Center. He said the proposed cost of the improvements was \$40,000 with proposed funding of \$32,000 from the grant with an \$8,000 match.

Council Member Litteral thanked staff for doing this and it was a great opportunity.

Council Member Vann MOVED to move Resolution 19-24, seconded by Council Member Rushing. Motion PASSED by a majority voice vote.

**Resolution 19-25** Additional Dispatching Services with Beaver Creek Township

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Clerk Miscisin read a Resolution to authorize the City Manager to enter into an agreement with Beavercreek Township for the City of Beavercreek to provide additional fire and emergency personnel dispatching services.

Chief Evers said this was an agreement between the City of Beavercreek and Beavercreek Township for the City of Beavercreek Police Department to provide additional dispatching service for the Township's Fire Department. Beavercreek Township entered into an agreement to provide fire/EMS services to Bath Township commencing January 1, 2019 for three years requiring this separate agreement for additional dispatching services. The duration of the agreement mirrors Beavercreek Township's agreement with Bath Township. This agreement shall automatically renew for an additional three year period unless written notice by the party intending to cancel is given to the other party by June 30<sup>th</sup> of the preceding year. The amount agreed to was \$17,070 and should involve less than 250 calls to the area that Beavercreek Township is servicing.

Mayor Stone asked if this amount was adjustable. Chief Evers said if the call number goes up, their fee goes up and the city's fee goes up.

Council Member Litteral MOVED to move Resolution 19-25, seconded by Vice Mayor Garcia. Motion PASSED by a majority voice vote.

#### **COUNCIL TIME**

Council Member Upton asked folks to check out what's going on with the Parks Department. He said there were lots of activities in the next few weeks.

Council Member Vann said the Public Health Department is celebrating 100 years. She attended a meeting with the Township and Greene County regarding the Russ property. She said the business park would be offering many certificates and opportunities. She thought there should be other accomplishments put on the city entrance signs and should be rotated every few years.

Council Member Litteral reminded everyone of the Taste of Greene County was this Sunday at the old Elder Beerman at the mall. The Beavercreek Women's League Scholarship Luncheon was being held April 27<sup>th</sup>.

Vice Mayor Garcia said McAllister's had a ribbon cutting for the new owners.

#### **MAYOR'S REPORT**

Flying Aces' ribbon cutting was being held on April 11<sup>th</sup>. He said the Dayton Development Coalition Fly-In held last week in Washington D.C. was very interesting.

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**CITY MANAGERS REPORT**

Mr. Landrum said the Parks Department is taking nominations for the Fourth of July Grand Marshal until May 1<sup>st</sup>. The ribbon cutting of Rotary Park playground will be Friday, April 19<sup>th</sup> at 4:00 p.m. at Rotary Park. The Summer Kick Off will be held on Saturday, April 27<sup>th</sup> from 11:00 a.m. – 2:00 p.m. at Lofino Park. Mr. Landrum reviewed the North Fairfield Resurfacing project and the Grange Hall/National Road Widening project.

**CITIZEN COMMENTS**

There being no comments, Citizen Comments was closed.

**EXECUTIVE SESSION**

Council Member Upton MOVED to enter into Executive Session at 7:12 p.m. pursuant to Section 121.22 of the Ohio Revised Code, for the purpose of preparing for, conducting or reviewing negotiations or bargaining sessions with public employees, seconded by Council Member Litteral. Motion PASSED by roll call vote of 6-0.

Council Member Vann MOVED to adjourn executive session at 7:45 p.m., seconded by Vice Mayor Garcia. Motion was PASSED by roll call vote of 6-0

Council Member Litteral MOVED to reconvene the meeting, seconded by Vice Mayor Garcia. Motion PASSED by majority voice vote.

**ADJOURNMENT**

Council Member Litteral MOVED to adjourn the meeting at 7:46 p.m., seconded by Vice Mayor Garcia. Motion PASSED by majority voice vote.

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Bob Stone, Mayor

ATTEST:

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Dianne Miscisin  
Clerk of Council  
Cmin040819



**CITY COUNCIL**  
**Regular Meeting – April 22, 2019 6:00 p.m.**  
**Council Chambers**

**PROCLAMATIONS**

- ◆ Arbor Day
- ◆ Older Americans' Month

**PRESENTATIONS**

- ◆ UES Fourth of July Donation, Lisa Oxendine and Ruth Carpenter
- ◆ Vault 6936 Robotics Team

- I. CALL TO ORDER
- II. ROLL CALL
- III. PLEDGE AND PRAYER/MOMENT OF SILENCE – Mayor Stone
- IV. APPROVAL OF AGENDA
- V. APPROVAL OF MINUTES
  - A. March 25, 2019 Regular Meeting
  - B. April 8, 2019 Regular Meeting
- VI. ORDINANCES, RESOLUTIONS AND PUDS
  - A. Resolution 19-26 Authorizing City Manager to sign Fraternal Order of Police Agreements
  - B. Resolution 19-27 Community Reinvestment Act (CRA) Affirmation
  - C. Resolution 19-28 PACE (Property Assessed Clean Energy) Resolution of Necessity
  - D. Ordinance 19-04 PACE (Property Assessed Clean Energy) Ordinance to Proceed (First Reading) (Adopt as Emergency on Third Reading)
  - E. Ordinance 19-05 PACE (Property Assessed Clean Energy) Levying Assessments (First Reading) (Adopt as Emergency on Third Reading)
- VII. DECISION ITEMS
  - A. Board Appointments - CRA
- VIII. COUNCIL TIME
- IX. MAYOR'S REPORT
- X. CITY MANAGER'S REPORT
- XI. CITIZEN COMMENTS
- XII. ADJOURNMENT



**CITY COUNCIL**  
**Regular Meeting – April 22, 2019 6:00 p.m.**  
**Council Chambers**

1368 Research Park Dr  
Beavercreek, Ohio

**PROCLAMATIONS**

- ◆ Arbor Day
- ◆ Older Americans' Month

**PRESENTATIONS**

- ◆ UES Fourth of July Donation, Lisa Oxendine and Ruth Carpenter
- ◆ Vault 6936 Robotics Team

- I. CALL TO ORDER
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- V. APPROVAL OF MINUTES
  - A. March 25, 2019 Regular Meeting
  - B. April 8, 2019 Regular Meeting
- VI. ORDINANCES, RESOLUTIONS AND PUDS
  - A. Resolution 19-26 Authorizing City Manager to sign Fraternal Order of Police Agreements
  - B. Resolution 19-27 Community Reinvestment Act (CRA) Affirmation
  - C. Resolution 19-28 PACE (Property Assessed Clean Energy) Resolution of Necessity
  - D. Ordinance 19-04 PACE (Property Assessed Clean Energy) Ordinance to Proceed (First Reading) (Adopt as Emergency on Third Reading)
  - E. Ordinance 19-05 PACE (Property Assessed Clean Energy) Levying Assessments (First Reading) (Adopt as Emergency on Third Reading)
- VII. DECISION ITEMS
  - A. Board Appointments - CRA
- VIII. COUNCIL TIME
- IX. MAYOR'S REPORT
- X. CITY MANAGER'S REPORT
- XI. CITIZEN COMMENTS
- XII. ADJOURNMENT

PEL

CITY OF BEAVERCREEK  
CITY COUNCIL  
AGENDA ITEM REPORT

Meeting Date: April 22, 2019	Reference Topic: Resolution 19-26
Agenda Reference No: VI. A.	Collective Bargaining Agreement with the Fraternal Order of Police, Lodge #160/ Sergeants, Patrol Officers and Civilian Employees.

ACTION REQUESTED		
<input type="checkbox"/> Adopt Ordinance	<input checked="" type="checkbox"/> Adopt Resolution	<input type="checkbox"/> Review and Comment
<input type="checkbox"/> No Action Requested	<input type="checkbox"/> Accept Staff Recommendation	<input type="checkbox"/> Other

RESPONSIBLE DEPARTMENT OR AGENCY		
<input type="checkbox"/> Finance	<input type="checkbox"/> City Council	<input type="checkbox"/> Law
<input type="checkbox"/> Parks & Recreation	<input type="checkbox"/> Engineering	<input type="checkbox"/> Planning & Zoning
<input checked="" type="checkbox"/> Police	<input type="checkbox"/> Public Service	<input type="checkbox"/> City Manager
<input type="checkbox"/> Clerk of Council	<input type="checkbox"/> Human Resources	<input type="checkbox"/> Other

**BACKGROUND AND STAFF SUMMARY:**

The City of Beavercreek and members of the Fraternal Order of Police Lodge #160 had a contract that expired on December 31, 2016. Subsequently, the FOP and City mutually extended the contract for two additional years with minor modifications through a Memorandum of Understanding that extended the contract through December 31, 2018. As such, formal negotiations occurred between the parties culminating with an agreed settlement that was ratified by the members of the three collective bargaining units within the FOP. These agreements are for a three year period beginning January 1, 2019 and ending December 31, 2021. The proposed agreements include the following:

- Effective 1/1/2019, a wage increase of 2.75%, a 2.5% increase effective 1/1/2020, and a 2.5% increase effective 1/1/2021.
- Effective 1/1/2019, the night shift differential increases from \$.50 to \$.70 per hour.
- Effective 1/1/2019, the employee insurance contribution increases from 17% to 17.5%. Thereafter language has been added to cap any future increases to 18.5% during the term of this agreement.

**STAFF RECOMMENDATION:**

Staff is recommending the approval of this resolution.

**CITY OF BEAVERCREEK, OHIO  
RESOLUTION 19-26**

**SPONSORED BY COUNCILMEMBER \_\_\_\_\_ ON THE 22<sup>ND</sup> DAY  
OF APRIL, 2019.**

**A RESOLUTION AUTHORIZING THE CITY MANAGER TO  
EXECUTE COLLECTIVE BARGAINING AGREEMENTS WITH THE  
FRATERNAL ORDER OF POLICE LODGE #160 COVERING  
SERGEANTS, PATROL OFFICERS, AND CIVILIAN EMPLOYEES.**

**WHEREAS**, the City of Beavercreek and the Fraternal Order of Police, Lodge No. 160 were parties to a two year collective bargaining agreement that ended December 31st 2018 ; and

**WHEREAS**, the City and the FOP entered into negotiations for a successor Agreement and have reached agreement on a new collective bargaining Agreement to be effective January 1, 2019 through December 31<sup>st</sup>, 2021;

**NOW, THEREFORE, THE CITY OF BEAVERCREEK HEREBY RESOLVES:**

**SECTION I.**

Council hereby authorizes the City Manager, on behalf of the City of Beavercreek, Ohio, to execute the collective bargaining agreements between the FOP and the City of Beavercreek for Sergeants, Patrol Officers and Civilians.

**SECTION II.**

It is hereby found and determined that all formal actions of this Council concerning and relating to the adoption of this Resolution were adopted in an open meeting of this Council, and that any and all deliberations of this Council and any of its committees that resulted in such formal action were in meetings open to the public, in compliance with all legal requirements, including, but not limited to, Section 121.22 of the Ohio Revised Code.

**SECTION III.**

This Resolution shall take effect retroactive to January 1, 2019.

**THIS RESOLUTION IS ADOPTED BY THE Council of the City of Beavercreek, Ohio  
this 22<sup>nd</sup> day of APRIL, 2019.**

\_\_\_\_\_  
Bob Stone, Mayor

ATTEST:

\_\_\_\_\_  
Dianne Miscisin, Clerk Of Council

**RESOLUTION 19-**

**SUMMARY**

**A RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE EACH COLLECTIVE BARGAINING AGREEMENT WITH THE FRATERNAL ORDER OF POLICE LODGE #160 COVERING SERGEANTS, PATROL OFFICERS AND CIVILIAN EMPLOYEES.**



**CITY OF BEAVERCREEK  
CITY COUNCIL  
AGENDA ITEM REPORT**

*PEC*

<b>Meeting Date:</b> April 22, 2019 <b>Agenda Reference No.:</b> VI. B	<b>Reference Topic:</b> CRA Affirmation Resolution Resolution 19-27
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<b>ACTION REQUESTED</b>		
<input checked="" type="checkbox"/> Approval	<input type="checkbox"/> Disapproval	<input type="checkbox"/> Table
<input type="checkbox"/> Review and Comment	<input type="checkbox"/> No Action Requested	<input type="checkbox"/> Other _____

The application for the CRA (Community Reinvestment Area) has been reviewed by the State Department of Development. There were some addendums needed to complete our application that pushed the final review past 60 days of the original passage of Resolution 18-44. Resolution 18-44 is the original legislation needed to create the CRA. This Resolution affirms the original approval and is the last item needed by the State to complete the review of the City's CRA application.

**RESOLUTION NO. 19-27**

**CITY OF BEAVERCREEK**

SPONSORED BY COUNCIL MEMBER \_\_\_\_\_ ON THE 22<sup>ND</sup> DAY OF APRIL, 2019.

**A RESOLUTION REAFFIRMING RESOLUTION NO. 18-44 AS AMENDED, WHICH IMPLEMENTED SECTIONS 3735.65 THROUGH 3735.70 OF THE OHIO REVISED CODE, ESTABLISHED AND DESCRIBED THE BOUNDARIES OF A COMMUNITY REINVESTMENT AREA IN THE CITY OF BEAVERCREEK, OHIO, DESIGNATED A HOUSING OFFICER TO ADMINISTER THE PROGRAM, AND CREATED A COMMUNITY REINVESTMENT HOUSING COUNCIL AND A TAX INCENTIVE REVIEW COUNCIL.**

**WHEREAS**, City Council, at the September 24, 2018 Council Meeting, adopted Resolution 18-44 as Amended which implemented Sections 3735.65 through 3735.70 of the Ohio Revised Code, established and described the boundaries of a Community Reinvestment Area in the City of Beavercreek, Ohio, designated a Housing Officer to administer the program, and created a Community Reinvestment Housing Council and a Tax Incentive Review Council; and

**WHEREAS**, the Tax Incentives Analyst of the Ohio Development Services Agency is requesting that Resolution No. 18-44 as Amended is reaffirmed by City Council; and

**WHEREAS**, City Council is desirous of permitting the same.

**NOW, THEREFORE, THE CITY OF BEAVERCREEK, COUNTY OF GREENE, OHIO, HEREBY RESOLVES:**

**SECTION I.**

That all terms and provisions of Resolution No. 18-44 as Amended, and related legislation be, and the same are, hereby reaffirmed.

**SECTION II.**

This Council finds and determines that all formal actions of this Council concerning and relating to the passage of this Resolution were taken in an open meeting of City Council and that all deliberations of City Council and of any committees and subcommittees that resulted in those formal actions were in meetings open to the public in compliance with the law.

**SECTION III.**

This Resolution shall take effect and be in force from and after the earliest period allowed by law.

PASSED this 22<sup>nd</sup> day of April, 2019.

\_\_\_\_\_  
Bob Stone, Mayor

ATTEST:

\_\_\_\_\_  
Dianne Miscisin, Clerk of Council

PREPARED BY: CITY ATTORNEY

**SUMMARY**

THIS RESOLUTION REAFFIRMS RESOLUTION NO. 18-44 AS AMENDED,  
WHICH IMPLEMENTED SECTIONS 3735.65 THROUGH 3735.70 OF THE  
OHIO REVISED CODE.

**CITY OF BEAVERCREEK  
CITY COUNCIL  
AGENDA ITEM REPORT**

*BCC*

<b>Meeting Date:</b> April 22, 2019	<b>Reference Topic:</b> PACE for City of Beavercreek and the Home2 Suites
<b>Agenda Reference No.:</b> VI. C-E	Resolution 19-28, Ordinance 19-04, Ordinance 19-05

ACTION REQUESTED		
<input checked="" type="checkbox"/> Approval	<input type="checkbox"/> Disapproval	<input type="checkbox"/> Table
<input type="checkbox"/> Review and Comment	<input type="checkbox"/> No Action Requested	<input type="checkbox"/> Other _____

The City received an application for PACE (Property Assessed Clean Energy) financing for the Home2 Suites at the Mall at Fairfield Commons. With this application, the City is able to create a citywide ESID (Energy Special Improvement District) allowing other developments throughout the City to be eligible for PACE financing with amended legislation.

**CITY OF BEAVERCREEK, OHIO  
RESOLUTION NO. 19-28**

SPONSORED BY COUNCIL MEMBER \_\_\_\_\_ ON THE 22<sup>ND</sup> DAY OF APRIL, 2019.

**A RESOLUTION APPROVING A PETITION FOR SPECIAL ASSESSMENTS FOR SPECIAL ENERGY IMPROVEMENT PROJECTS, A PLAN FOR PUBLIC IMPROVEMENTS, AND THE ARTICLES OF INCORPORATION FOR THE CREATION AND GOVERNANCE OF AN ENERGY SPECIAL IMPROVEMENT DISTRICT UNDER OHIO REVISED CODE CHAPTER 1710; AND DECLARING THE NECESSITY OF ACQUIRING, CONSTRUCTING, AND IMPROVING CERTAIN PUBLIC IMPROVEMENTS DESCRIBED IN THE PLAN FOR PUBLIC IMPROVEMENTS IN COOPERATION WITH THE BEAVERCREEK ENERGY SPECIAL IMPROVEMENT DISTRICT; AND DECLARING AN EMERGENCY**

**WHEREAS**, as set forth in Ohio Revised Code Chapter 1710, the Ohio General Assembly has authorized property owners to create and include their properties within energy special improvement districts (“ESIDs”) upon a petition to a municipal corporation or township, which ESIDs are voluntary organizations of property owners who undertake special energy improvement projects for their properties and finance such special energy improvement projects by way of voluntary special assessments; and

**WHEREAS**, Greene Innkeepers, LLC (and together with all future owners of the Project Site, as defined below, the “Owner”), as the current owner of certain real property located within the City of Beavercreek, Ohio (the “City”), has identified certain real property located at 2667 Fairfield Commons Boulevard, Beavercreek, Ohio 45431, within the City (the “Project Site”), as an appropriate property for a special energy improvement project pursuant to Ohio Revised Code Chapter 1710; and

**WHEREAS**, the Owner has submitted to the Council of the City (the “City Council”) a *Petition for Creation of Energy Special Improvement District and for Special Assessments for Special Energy Improvement Projects* (the “Petition”), together with the Articles of Incorporation of the Beavercreek Energy Special Improvement District, Inc. (the “Articles of Incorporation”) and the *Beavercreek Energy Special Improvement District Project Plan* (the “Plan”), all in accordance with Ohio Revised Code Section 1701.02; and

**WHEREAS**, the Petition, which is on file with the City, has been signed by the Owner, as the owner of 100% of the real property affected by the Petition (as further described in Exhibit A to the Petition), which is the Project Site; and,

**WHEREAS**, the Petition and the Plan request that the City create the District, add the Project Site to the territory of the District, and levy special assessments on the Project Site to pay the costs of a special energy improvement project consisting of acquiring, constructing, equipping, improving, and installing energy efficiency improvements, including, without limitation, LED lighting, building envelope improvements, energy efficient windows, a high-efficiency HVAC system, a high-efficiency water system, and related improvements to be provided on the Project Site, all as described more particularly in the Petition and the Plan (the "Project"); and

**WHEREAS**, the Petition is for the purpose of developing and implementing special energy improvement projects in furtherance of the purposes set forth in Section 20 of Article VIII of the Ohio Constitution, including, without limitation, the Project and other special energy improvement projects to be located on properties that may from time to time be added to the District, and further, the Petition identifies the amount and length of the special assessments to be imposed with respect to the Project; and

**WHEREAS**, in accordance with Ohio Revised Code Section 1701.02, the Beavercreek Energy Special Improvement District (the "District") is to be governed by the Beavercreek Energy Special Improvement District, Inc., an Ohio nonprofit corporation; and

**WHEREAS**, the members of the District will be the property owners who voluntarily include their properties in the District, and the members of the board of directors of the District will include representatives of the City and property owners who voluntarily include their properties in the District; and

**WHEREAS**, this City Council, as mandated by Ohio Revised Code Section 1710.06, must approve or disapprove the Petition within 60 days of the submission of the Petition; and

**WHEREAS**, Ohio Revised Code Section 1710.06(C) provides that a political subdivision which has approved a petition for special assessments for public improvements in an energy special improvement district and a plan pursuant to Ohio Revised Code Sections 1710.02(F) and 1710.06 shall levy the requested special assessments pursuant to Ohio Revised Code Chapter 727; and

**WHEREAS**, in the Petition, the Owner requests that the Project be paid for by special assessments assessed upon the Project Site (the "Special Assessments") in an amount sufficient to pay the costs of the Project, which are estimated to be \$6,206,825.00 including other related costs of financing the Project, which include, without limitation, the payment of principal of and interest on obligations issued to pay the costs of the Project and other interest, financing, credit enhancement, and issuance expenses, including City administrative and legal fees and expenses, and ongoing trustee fees and District administrative fees and expenses, and requests that the

Project be undertaken cooperatively by the City, the District, and such other parties as the City may deem necessary or appropriate.

**NOW, THEREFORE, BE IT RESOLVED** by the Council of the City of Beavercreek, Ohio:

**SECTION 1.** Each capitalized term used in this Resolution where the rules of grammar would otherwise not require and not otherwise defined in this Resolution or by reference to another document shall have the meaning assigned to it in the Petition.

**SECTION 2.** This City Council hereby approves the Petition for the Creation of the Beavercreek Energy Special Improvement District, the Articles of Incorporation, and the Plan, in substantially the form now on file with the City Council. This City Council determines that the costs of the special energy improvement projects expected to be completed at the Project Site are permitted costs of energy special improvement projects within the meaning of Ohio Revised Code Sections 1710.07 and 133.15(B) and are therefore eligible for reimbursement from the Special Assessments.

**SECTION 3.** The City Council, in accordance with Ohio Revised Code Section 1710.04 and the Articles of Incorporation, appoints \_\_\_\_\_ to serve on the Board of Directors of the Beavercreek Energy Special Improvement District, Inc. (the "Board") as the representatives of the legislative authority of the City on the Board pursuant to the requirements of the Articles of Incorporation.

**SECTION 4.** This City Council approves and consents to (i) any addition of real property to the territory of the District within the boundaries of any municipal corporation or any township which is contiguous to the municipal corporations or townships in which a portion of the territory the District is located; (ii) the addition of the municipal corporation or township in which such real property is located as a "participating political subdivision," as defined in Ohio Revised Code Section 1710.01(E), of the District; and (iii) any amendment to the Articles of Incorporation necessary to recognize and effect such addition.

**SECTION 5.** This City Council declares necessary, and a vital and essential public purpose of the City, to improve the Project Site, which is located at 2667 Fairfield Commons Boulevard, Beavercreek, Ohio 45431, within the City, by providing for the acquisition, construction, and improvement of the Project by the Owner, as set forth in the Petition, and providing for the payment of the costs of the project, including any and all architectural, engineering, legal, insurance, consulting, energy auditing, planning, acquisition, installation, construction, surveying, testing, and inspection costs; the amount of any damages resulting from the Project and the interest

on such damages; the costs incurred in connection with the preparation, levy and collection of the Special Assessments; the cost of purchasing and otherwise acquiring any real estate or interests in real estate; expenses of legal services; costs of labor and material; and other financing costs incurred in connection with the issuance, sale, and servicing of securities, nonprofit corporate obligations, or other obligations issued to provide a loan to the Owner or otherwise to pay costs of the Project in anticipation of the receipt of the Special Assessments, capitalized interest on, and financing reserve funds for, such securities, nonprofit corporate obligations, or other obligations so issued, including any credit enhancement fees, trustee fees, District administrative fees and expenses, and City administrative and legal fees and expenses, together with all other necessary expenditures, all as more fully described in the Petition and profiles, specifications, and estimates of cost of the Project, all of which are on file with the City Fiscal Officer (the "Fiscal Officer") and open to the inspection of all persons interested.

**SECTION 6.**

This City Council determines that the Project's elements are so situated in relation to each other that in order to complete the acquisition and improvement of the Project's elements in the most practical and economical manner, they should be acquired and improved at the same time, with the same kind of materials, and in the same manner; and that the Project's elements shall be treated as a single improvement, pursuant to Ohio Revised Code Section 727.09, and the Project's elements shall be treated as a joint improvement to be undertaken cooperatively by the City and the District pursuant to Ohio Revised Code Section 9.482 and Ohio Revised Code Chapter 1710. Pursuant to Ohio Revised Code Section 1710.02(G)(4), this City Council hereby determines that the special energy improvement project to be constructed and implemented at the Project Site is not required to be owned exclusively by the City. This City Council accordingly hereby authorizes the board of directors of the District to act as its agent to sell, transfer, lease, or convey the special energy improvement project to be constructed and implemented at the Project Site. The board of directors of the District must obtain from any sale, transfer, lease, or conveyance of the special energy improvement project at the Project Site any consideration greater than or equal to \$1.00.

**SECTION 7.**

The plans and specifications and total cost of the Project now on file in the office of the Fiscal Officer are approved, subject to changes as permitted by Ohio Revised Code Chapter 727. The Project shall be made in accordance with the plans, specifications, profiles, and estimates for the Project.

**SECTION 8.**

This City Council declares that the Project is an essential and vital public, governmental purpose of the City as a Special Energy Improvement Project, as defined in Ohio Revised Code Section 1710.01(I); and that in



order to fulfill that essential and vital public purpose of the City, it is necessary and proper to provide, in cooperation with the District, for the acquisition, construction, and improvement of the Project in the manner contemplated by the Petition. This City Council determines and declares that the Project is conducive to the public peace, health, safety, and welfare of the City and the inhabitants of the City.

**SECTION 9.**

Pursuant to, and subject to, the provisions of a valid Petition signed by the owners of 100% of the Project Site, the entire cost of the Project shall be paid by the Special Assessments levied against the Project Site, which is the benefited property. The provisions of the Petition are ratified, adopted, approved and incorporated into this Resolution as if set forth in full in this Resolution. The portion of the costs of the Project allocable to the City will be 0%. The City does not intend to issue securities in anticipation of the levy or collection of the Special Assessments.

**SECTION 10.**

The method of levying the Special Assessments shall be in proportion to the benefits received, allocated among the parcels constituting the Project Site as set forth in the Petition.

**SECTION 11.**

The lots or parcels of land to be assessed for the Project shall be the Project Site, described in Exhibit "A" to the Petition, all of which lots and lands are determined to be specially benefited by the Project.

**SECTION 12.**

The Special Assessments shall be levied and paid in 50 semi-annual installments pursuant to the list of estimated Special Assessments set forth in the Petition, and the Owner has waived its option to pay the Special Assessment in cash within 30 days after the passage of the assessing Resolution. The period over which the services and improvements provided pursuant to the Plan are useful is determined to be 26 years. The aggregate amount of Special Assessments estimated to be necessary to pay the costs of the Project is \$6,206,825.00. Each semi-annual Special Assessment payment represents payment of a portion of the principal of and interest on obligations issued to pay the costs of the Project and of administrative expenses. The interest portion of the Special Assessments, together with amounts used to pay administrative expenses, are determined to be substantially equivalent to the fair market rate or rates of interest that would have been borne by securities issued in anticipation of the collection of the Special Assessments if such securities had been issued by the City. In addition to the Special Assessments, the County Auditor of Greene County, Ohio (the "County Auditor") may impose a special assessment collection fee with respect to any annual payment certified to the County Auditor for collection, which amount, if any, will be added to the Special Assessments by the County Auditor.

**SECTION 13.**

The Fiscal Officer or the Fiscal Officer's designee is authorized and directed to prepare and file in the office of the City Council the estimated Special Assessments for the cost of the Project in accordance with the method of assessment set forth in the Petition and this Resolution, showing the amount of the assessment against each lot or parcel of land to be assessed.

**SECTION 14.**

That pursuant to the Petition, the Owner has waived notice of the adoption of this Resolution and the filing of the estimated Special Assessments, as provided in Ohio Revised Code Section 727.13, and City Council hereby accepts that waiver.

**SECTION 15.**

The Fiscal Officer or the Fiscal Officer's designee is authorized, pursuant to Ohio Revised Code Section 727.12, to cause the Special Assessments to be levied and collected at the earliest possible time including, if applicable, prior to the completion of the acquisition and construction of the Project.

**SECTION 16.**

The Special Assessments will be used by the City to provide the Project in cooperation with the District in any manner, including assigning the Special Assessments actually received by the City to the District or to another party which the City deems appropriate, and the Special Assessments are appropriated for such purposes.

**SECTION 17.**

This City Council accepts and approves the waiver of all further notices, hearings, claims for damages, rights to appeal and other rights of property owners under the law, including but not limited to those specified in the Ohio Constitution, Ohio Revised Code Chapter 727 and Ohio Revised Code Chapter 1710 and consents to the immediate imposition of the Special Assessments upon the Project Site. This waiver encompasses, but is not limited to, waivers by the Owner of the following rights:

- (i) The right to notice of the adoption of the Resolution of Necessity under Ohio Revised Code Sections 727.13 and 727.14;
- (ii) The right to limit the amount of the Special Assessments under Ohio Revised Code Sections 727.03 and 727.06;
- (iii) The right to file an objection to the Special Assessments under Ohio Revised Code Section 727.15;
- (iv) The right to the establishment of, and any proceedings by and any notice from an Assessment Equalization Board under Ohio Revised Code Sections 727.16 and 727.17;
- (v) The right to file any claim for damages under Ohio Revised Code Sections 727.18 through 727.22 and Ohio Revised Code Section 727.43;
- (vi) The right to notice that bids or quotations for the Project may exceed estimates by 15%;

- (vii) The right to seek a deferral of payments of Special Assessments under Ohio Revised Code Section 727.251;
- (viii) The right to notice of the passage of the assessing Resolution under Ohio Revised Code Section 727.26; and
- (ix) Any and all procedural defects, errors, or omissions in the Special Assessment process.

**SECTION 18.**

It is found and determined that all formal actions of this City Council concerning and relating to the adoption of this Resolution were adopted in an open meeting of this City Council, and that all deliberations of this City Council that resulted in such formal action were in meetings open to the public in compliance with the law.

**SECTION 19.**

This Resolution is declared to be an emergency measure necessary for the immediate preservation of the public health, safety, and welfare of the City and for the further reason that this Resolution is required to be immediately effective in order to allow the District to take advantage of financing available to it for a limited time. Therefore, this Resolution shall be in full force and effect immediately upon its adoption and certification.

[Balance of Page Intentionally Left Blank]

**SECTION 18.**

This Resolution shall become effective immediately upon its passage.

THIS RESOLUTION IS ADOPTED BY THE Council of the City of Beavercreek, Ohio  
this 22<sup>nd</sup> day of April, 2019.

\_\_\_\_\_  
Bob Stone, Mayor

Attest:

\_\_\_\_\_  
Dianne Miscisin, Clerk of Council

\_\_\_\_\_ moved for the adoption of the ordinance.

\_\_\_\_\_ seconded the motion.

	Yea	Nay	Absent
Bob Stone .....	_____	_____	_____
Joanna Garcia.....	_____	_____	_____
Charles Curran.....	_____	_____	_____
Melissa Litteral.....	_____	_____	_____
Ryan Rushing.....	_____	_____	_____
Zach Upton.....	_____	_____	_____
Julie Vann.....	_____	_____	_____

**CERTIFICATION**

The undersigned hereby certifies that this Resolution was duly passed by the Council of  
the City of Beavercreek, Ohio on \_\_\_\_\_, 2019.

\_\_\_\_\_  
Clerk of Council  
City of Beavercreek, Ohio

**PETITION FOR CREATION OF ENERGY SPECIAL  
IMPROVEMENT DISTRICT AND FOR SPECIAL ASSESSMENTS  
FOR SPECIAL ENERGY IMPROVEMENT PROJECTS**

**A PETITION TO THE CITY OF BEAVERCREEK, OHIO REQUESTING THE  
CREATION OF THE BEAVERCREEK ENERGY SPECIAL IMPROVEMENT  
DISTRICT AND LEVYING OF SPECIAL ASSESSMENTS AGAINST PROPERTY  
OWNED BY THE PETITIONER TO PAY THE COSTS OF VARIOUS SPECIAL  
ENERGY IMPROVEMENT PROJECTS FOR THE SPECIAL BENEFIT OF THE  
ASSESSED PROPERTY AND A WAIVER OF ALL RIGHTS TO NOTICES, HEARINGS  
AND APPEALS RESPECTING THE REQUESTED SPECIAL ASSESSMENTS**

To: The City Manager and Council of the City of Beavercreek, Ohio

Greene Innkeepers, LLC, an Ohio limited liability company (the "Petitioner") is the owner of 100% of the property described on Exhibit A, attached to and incorporated into this Petition (the "Property"). The undersigned represents that he or she is the duly authorized signatory or officer of the Petitioner. The Petitioner plans to implement special energy improvement projects on the Property (the "Authorized Improvements", as further described in Exhibit C), and be subject to the Special Assessments (as defined in this Petition).

The Petitioner respectfully petitions the City of Beavercreek, Ohio (the "City" or "Participating Political Subdivision") for the creation of the **Beavercreek Energy Special Improvement District** (the "District") pursuant to Ohio Revised Code Chapter 1710, as amended from time to time (the "Act"). The District boundaries initially will be as described and shown in Exhibit B, attached to and incorporated into this Petition. In accordance with the Act, the District may be expanded to include additional territory ("Additional Territory") for the purpose of developing and implementing special energy improvement projects. At least one special energy improvement project will be designated for each parcel of real property within Additional Territory of the District. The Petitioner represents that a special energy improvement project will be developed and implemented on each parcel of real property owned by the Petitioner as set forth below and as further described in Exhibit C, attached to and incorporated into this Petition.

As authorized by Ohio Revised Code Section 1710.02(F), the Petitioner, as the owner of the Property being 100% of the area proposed to be assessed for the Authorized Improvements, further respectfully petitions the City (a) to approve an initial plan for the District (the "Plan"), attached to this Petition as Exhibit C, which Plan includes the description of the Authorized Improvements, (b) for the construction of the Authorized Improvements, and (c) to assess on the Property, in proportion to the special benefits that will result from the Authorized Improvements, the total cost of those Authorized Improvements, including the costs of planning, designing, and implementing the Authorized Improvements incurred to date by the Petitioner, as authorized under Ohio Revised Code Chapters 727 and 1710 (the "Special Assessments"), to pay the costs of the Authorized Improvements.

In connection with this Petition and in furtherance of its purposes, the Petitioner acknowledges that it has reviewed or caused to be reviewed (i) the Plan, (ii) the plans, specifications, and profiles for the Authorized Improvements, (iii) the estimate of cost for the Authorized Improvements included in Exhibit C, attached to and incorporated into this Petition, and (iv) the schedule of estimated special assessments to be levied for the Authorized Improvements also included in Exhibit C. The Petitioner acknowledges that the estimated special assessment for each parcel is in proportion to the benefits that may result from the Authorized Improvements.

**1. Purpose.** The District's purpose will be to enhance the value of the Property and Additional Territories and improve the environment by developing and assisting in developing special energy improvement projects on the Property and on Additional Territories. The District will be authorized to provide special energy improvement projects pursuant to the Act that will benefit the Property. The District further will be authorized to take any other actions pursuant to the Act that may be taken by special energy improvement districts organized for the purpose of developing and implementing plans for special energy improvement projects.

**2. Corporate Entity and Governance.** The operations and fiscal affairs of the District will be managed and administered by the Board of Directors ("Board") of the Beaver Creek Energy Special Improvement District, Inc. an Ohio nonprofit corporation to be formed for the purpose of governing the District (the "Corporation"), all in accordance with the Act. The articles of incorporation of the Corporation are attached to and incorporated into this Petition as Exhibit D. The Board will consist of at least five individuals. The Board will have all powers authorized by the Act. Pursuant to the Act, one board member will be a person appointed by and serving at the pleasure of the Council of the City (the "City Council"). One board member will be the City Manager or a person appointed and serving at the pleasure of the City Manager who is involved in planning or economic development functions for the City. The remaining board members will be persons elected by, designated by, or carrying the proxy of the members of the District in accordance with Ohio Revised Code Sections 1710.03, and the qualifications of the remaining members will be set forth in the Articles of Incorporation or the Code of Regulations of the District in accordance with Ohio Revised Code Section 1702.27.

The Petitioner acknowledges and agrees that the Board, in its sole discretion and as authorized by Ohio Revised Code Section 1702.33, may delegate authority to an executive committee. Petitioner further acknowledges and agrees that the Board, in its sole discretion and as authorized by Ohio Revised Code Sections 1702.12, 1702.33, and 1710.11, may contract for the provision of services pursuant to the Board's prescribed competitive bidding procedures.

**3. Authority.** The District will be authorized to provide special energy improvement projects pursuant to the Act that will benefit property within the boundaries of the District. The City will be authorized to levy a special assessment on each property within the District that lies within the territorial boundaries of the City to pay for special energy improvement projects, based on the benefits conferred by those special energy improvement projects as further provided for in the Plan and this Petition.

4. **Plan.** As authorized in the Act, the Petitioner requests that the City approve the Plan attached to this petition as Exhibit C. Petitioner acknowledges and agrees that the initial Plan for the District may be modified and supplemented by additional plans for the district approved by the Board or the City Council, all in accordance with the Act.

5. **Boundaries.** A legal description of the parcel, as identified by parcel number, to be included in the District by this Petition is provided in Exhibit A. The District boundaries are further described in Exhibit B.

6. **Special Assessments.** In consideration of the City's acceptance of this Petition and the imposition of the requested Special Assessments, the Petitioner consents and agrees that the Property as identified in Exhibit A shall be assessed for all of the costs of the Authorized Improvements, including any and all architectural, engineering, legal, insurance, consulting, energy auditing, planning, acquisition, installation, construction, surveying, testing and inspection costs; the amount of any damages resulting from the Authorized Improvements and the interest on such amounts; the costs incurred in connection with the preparation, levy, and collection of the special assessments; the cost of purchasing and otherwise acquiring any real estate or interests in real estate; expenses of legal services; costs of labor and material; and trustee fees and other financing costs, including City administrative and legal fees and expenses, incurred in connection with the issuance, sale, and servicing of securities or other obligations issued to provide loans or otherwise to pay costs of the Authorized Improvements in anticipation of its receipt of the special assessments, capitalized interest on, and financing reserve funds for, such securities or other obligations; together with all other necessary expenditures. The Petitioner agrees to pay the Special Assessments in a timely manner whether or not the Petitioner receives annual and timely notices of the Special Assessments.

In consideration of the Authorized Improvements, the Petitioner, for itself and its grantees and other successors with respect to the Property, agree to pay promptly all Special Assessments as they become due, and agree that the determination by City Council of the Special Assessments in accordance with the terms hereof will be final, conclusive and binding upon the Petitioner and the Property. In further consideration of the Authorized Improvements, the Petitioner covenants and agrees to disclose, upon the transfer of the Property or any portion of the Property to be special assessed for the actual costs of the Authorized Improvements set forth in Exhibit C, in the deed to the transferee or in a separate instrument recorded with respect to the Property the existence of any outstanding Special Assessment for the Authorized Improvements and to require that transferee covenant to disclose that information in any subsequent deed or in a separate instrument recorded with respect to the Property at the time of the subsequent transfer so long as the Special Assessments remain unpaid. As a condition to each subsequent transfer while the Special Assessments remain unpaid, the Petitioner further covenants and agrees to provide expressly in the deed to any transferee or in a separate instrument recorded with respect to the Property at the time of the subsequent transfer (a) for the acquisition by the transferee of the Property subject to any outstanding Special Assessment and the transferee's assumption of responsibility for payment thereof and for the waiver by the transferee of any rights that the Petitioner has waived pursuant to this Petition, and (b) the requirement that each transferee from time to time of the Property covenant to include in the deed to any subsequent transferee or in a

separate instrument recorded with respect to the Property at the time of the subsequent transfer the conditions described in clause (a) so long as the Special Assessments remain unpaid.

The Petitioner further acknowledges and confirms that the Special Assessments set forth in this Petition and in **Exhibit C** are proportionate to, and do not exceed, the special benefits to be conferred on the Property by the Authorized Improvements identified in this Petition. The Petitioner further consents to the levying of the Special Assessments against the Property by the City Council. The Petitioner acknowledges that these Special Assessments are fair, just, and equitable, and that they are being imposed at the specific request of the Petitioner.

**7. Waiver of Notices and Process.** The Petitioner expressly waives notice and publication of all resolutions, legal notices, and hearings provided for in the Ohio Revised Code with respect to the Authorized Improvements and the Special Assessments, particularly those in Ohio Revised Code Chapters 727 and 1710, and consents to proceeding with the Authorized Improvements. Without limiting the foregoing, but only with regard to the Authorized Improvements and Special Assessments for the Authorized Improvements for the Project (as defined in **Exhibit D**), the Petitioner specifically waives any notices and rights under the following Ohio Revised Code Sections:

- The right to notice of the adoption of the Resolution of Necessity under Ohio Revised Code Sections 727.13 and 727.14;
- The right to limit the amount of the Special Assessment under Ohio Revised Code Sections 727.03 and 727.06;
- The right to file an objection to the Special Assessment under Ohio Revised Code Section 727.15;
- The right to the establishment of, and any proceedings by and any notice from, an Assessment Equalization Board under Ohio Revised Code Sections 727.16 and 727.17;
- The right to file any claim for damages under Ohio Revised Code Sections 727.18 through 727.22 and Ohio Revised Code Section 727.43;
- The right to notice that bids or quotations for the Authorized Improvements may exceed estimates by 15%;
- The right to seek a deferral of payments of Special Assessments under Ohio Revised Code Section 727.251; and
- The right to notice of the passage of the Assessing Ordinance under Ohio Revised Code Section 727.26.

The Petitioner consents to proceed immediately with all actions necessary to acquire, install and construct the Authorized Improvements and impose the Special Assessments.

**8. Agricultural Districts.** The Petitioner further agrees not to take any actions, or cause to be taken any actions, to place any of the Property in an agricultural district as provided for in Ohio Revised Code Chapter 929, and if any of the Property is in an agricultural district, the Petitioner, in accordance with Ohio Revised Code Section 929.03, hereby grants permission to collect any assessments levied against such Property.



**9. No Reliance on Estimates.** The Petitioner acknowledges that the Special Assessments set forth in this Petition and its Exhibits are based upon an estimate of costs, and that the final Special Assessments shall be calculated in the same manner, which, regardless of any statutory limitation, may be more or less than the respective estimated assessments for the Authorized Improvements. In the event the final assessments exceed the estimated assessments, the Petitioner, without limitation of the other waivers contained in this Petition, also waives any rights it may now or in the future have to object to those assessments, any notice provided for in Ohio Revised Code Chapters 727 and 1710, and any rights of appeal provided for in those Chapters or otherwise. The Petitioner further acknowledges and represents that the respective final assessments may be levied at such time as determined by the City, regardless of whether or not any of the parts or portions of the Authorized Improvements have been completed.

**10. Obligation to Pay Special Assessments.** The Petitioner further acknowledges that the final assessments for the Authorized Improvements, when levied against the Property, will be payable in cash within 30 days from the date of passage of the ordinance confirming and levying the final assessments and that if any of such assessments are not paid in cash they will be certified to the Auditor of Greene County, as provided by law, to be placed on the tax list and duplicate and collected as other taxes are collected. Notwithstanding the foregoing, however, the Petitioner requests that the unpaid final assessments for the Authorized Improvements shall be payable in 50<sup>1</sup> semi-annual installments, in amounts necessary to pay the costs of the Authorized Improvements, which include, without limitation, interest at an estimated annual rate of 6.48<sup>2</sup>%. The Petitioner hereby acknowledges and agrees that the actual rate of interest shall be determined on or before the date on which the Special Assessments are levied as the rate of interest available to finance the hard costs of the Authorized Improvements as of the date on which the interest rate is fixed, all as further described in Exhibit C.

**11. Waivers.** The Petitioner further waives any and all questions as to the constitutionality of the laws under which Authorized Improvements shall be acquired, installed, or constructed, the proceedings relating to the acquisition, installation, or construction of the Authorized Improvements shall occur, and the jurisdiction of the City is granted. The Petitioner further waives any and all irregularities, errors, and defects, procedural or otherwise, if any, in the levying of the assessments or the undertaking of the Authorized Improvements. The Petitioner specifically waives any and all rights of appeal, including any right of appeal as provided in Ohio Revised Code Title 7, and specifically but without limitation, Ohio Revised Code Chapters 727 and 1710, as well as all such similar rights under the Constitution of the State of Ohio but only with regard to the Authorized Improvements and Special Assessments for the Authorized Improvements for the Project (as defined in Exhibit D). The Petitioner represents that it will not contest, in a judicial or administrative proceeding, the undertaking of the Authorized Improvements, the estimated assessments, the final assessments, and any Special Assessments levied against the Property for the Authorized Improvements, or any other related matters, but only with regard to the Authorized Improvements and Special Assessments for the Authorized Improvements for the Project (as defined in Exhibit D). In no event shall the foregoing waivers

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<sup>1</sup> Preliminary as of April 5, 2019 only; subject to adjustment until the day on which the special assessments are levied.

<sup>2</sup> Estimate as of April 5, 2019 only; subject to adjustment until the day on which the special assessments are levied..

be construed as a waiver by the Petitioner of its rights with regard to any other taxes, whether general taxes, special assessments, or otherwise.

**12. Irrevocability.** The Petitioner acknowledges and understands that the City will be relying upon this Petition in taking actions and expending resources. This Petition therefore shall be irrevocable and shall be binding upon the Petitioner, its successors and assigns, the Property, and any grantees, mortgagees, lessees, or transferees of the Property.

**13. Knowledge of Waivers.** The Petitioner acknowledges that it has had an opportunity to be represented by legal counsel in this undertaking and has knowingly waived the rights identified in this Petition.

**14. Miscellaneous.** The Petitioner acknowledges that the District is being created using a single petition option under the Act and that no further authorization by the Petitioner may be required prior to the implementation of the Plan and the levying of assessments.

This Petition may be executed in several counterparts, each of which will be an original and all of which will constitute one and the same Petition.

**The City Manager and City Council of the City of Beavercreek, Ohio are hereby respectfully requested to approve, by resolution, this Petition, and to levy special assessments against the property subject to this Petition.**

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**IN WITNESS WHEREOF**, the Petitioner has caused this petition to be executed by its authorized representative, as set forth below.

**PETITIONER:**  
**GREENE INNKEEPERS, LLC**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Address for notices to Property Owner:

Greene Innkeepers, LLC  
4404 Buckeye Lane, Suite 220  
Beavercreek, Ohio 45440

STATE OF OHIO                    )  
  )       SS:  
COUNTY OF \_\_\_\_\_ )

On the \_\_\_\_\_ day of \_\_\_\_\_, 2019, \_\_\_\_\_, as the \_\_\_\_\_ of Greene Innkeepers, LLC, personally appeared before me, a notary public in and for the State of Ohio, who acknowledged the execution of the foregoing Petition on behalf of Greene Innkeepers, LLC and that the same was the free act and deed of such officer and of such port authority.

**IN WITNESS WHEREOF**, I have hereunto subscribed my name and affixed my official seal on the day and year aforesaid.

[SEAL]

\_\_\_\_\_  
Notary Public

**EXHIBIT A**

The Property subject to this Petition is located at the commonly used address 2667 Fairfield Commons Boulevard, Beavercreek, Ohio 45431, with Greene County Auditor Parcel ID No.:

B42000400030006300

## **EXHIBIT B**

### **DISTRICT BOUNDARIES**

This **Exhibit B** defines the initial boundaries of the Beavercreek Energy Special Improvement District (the “District”), which consists of the parcel designated by Greene County Auditor parcel number as follows:

Parcel ID:

B42000400030006300

**EXHIBIT C**

**PLAN FOR THE BEAVERCREEK ENERGY SPECIAL IMPROVEMENT DISTRICT**

[See attached]

**EXHIBIT D**

**ARTICLES OF INCORPORATION  
OF THE  
BEAVERCREEK ENERGY SPECIAL IMPROVEMENT DISTRICT, INC.**

[See attached]

**PETITION FOR CREATION OF ENERGY SPECIAL  
IMPROVEMENT DISTRICT AND FOR SPECIAL ASSESSMENTS  
FOR SPECIAL ENERGY IMPROVEMENT PROJECTS**

**A PETITION TO THE CITY OF BEAVERCREEK, OHIO REQUESTING THE  
CREATION OF THE BEAVERCREEK ENERGY SPECIAL IMPROVEMENT  
DISTRICT AND LEVYING OF SPECIAL ASSESSMENTS AGAINST PROPERTY  
OWNED BY THE PETITIONER TO PAY THE COSTS OF VARIOUS SPECIAL  
ENERGY IMPROVEMENT PROJECTS FOR THE SPECIAL BENEFIT OF THE  
ASSESSED PROPERTY AND A WAIVER OF ALL RIGHTS TO NOTICES, HEARINGS  
AND APPEALS RESPECTING THE REQUESTED SPECIAL ASSESSMENTS**

To: The City Manager and Council of the City of Beavercreek, Ohio

Greene Innkeepers, LLC, an Ohio limited liability company (the "Petitioner") is the owner of 100% of the property described on Exhibit A, attached to and incorporated into this Petition (the "Property"). The undersigned represents that he or she is the duly authorized signatory or officer of the Petitioner. The Petitioner plans to implement special energy improvement projects on the Property (the "Authorized Improvements", as further described in Exhibit C), and be subject to the Special Assessments (as defined in this Petition).

The Petitioner respectfully petitions the City of Beavercreek, Ohio (the "City" or "Participating Political Subdivision") for the creation of the **Beavercreek Energy Special Improvement District** (the "District") pursuant to Ohio Revised Code Chapter 1710, as amended from time to time (the "Act"). The District boundaries initially will be as described and shown in Exhibit B, attached to and incorporated into this Petition. In accordance with the Act, the District may be expanded to include additional territory ("Additional Territory") for the purpose of developing and implementing special energy improvement projects. At least one special energy improvement project will be designated for each parcel of real property within Additional Territory of the District. The Petitioner represents that a special energy improvement project will be developed and implemented on each parcel of real property owned by the Petitioner as set forth below and as further described in Exhibit C, attached to and incorporated into this Petition.

As authorized by Ohio Revised Code Section 1710.02(F), the Petitioner, as the owner of the Property being 100% of the area proposed to be assessed for the Authorized Improvements, further respectfully petitions the City (a) to approve an initial plan for the District (the "Plan"), attached to this Petition as Exhibit C, which Plan includes the description of the Authorized Improvements, (b) for the construction of the Authorized Improvements, and (c) to assess on the Property, in proportion to the special benefits that will result from the Authorized Improvements, the total cost of those Authorized Improvements, including the costs of planning, designing, and implementing the Authorized Improvements incurred to date by the Petitioner, as authorized under Ohio Revised Code Chapters 727 and 1710 (the "Special Assessments"), to pay the costs of the Authorized Improvements.



In connection with this Petition and in furtherance of its purposes, the Petitioner acknowledges that it has reviewed or caused to be reviewed (i) the Plan, (ii) the plans, specifications, and profiles for the Authorized Improvements, (iii) the estimate of cost for the Authorized Improvements included in Exhibit C, attached to and incorporated into this Petition, and (iv) the schedule of estimated special assessments to be levied for the Authorized Improvements also included in Exhibit C. The Petitioner acknowledges that the estimated special assessment for each parcel is in proportion to the benefits that may result from the Authorized Improvements.

**1. Purpose.** The District's purpose will be to enhance the value of the Property and Additional Territories and improve the environment by developing and assisting in developing special energy improvement projects on the Property and on Additional Territories. The District will be authorized to provide special energy improvement projects pursuant to the Act that will benefit the Property. The District further will be authorized to take any other actions pursuant to the Act that may be taken by special energy improvement districts organized for the purpose of developing and implementing plans for special energy improvement projects.

**2. Corporate Entity and Governance.** The operations and fiscal affairs of the District will be managed and administered by the Board of Directors ("Board") of the Beavercreek Energy Special Improvement District, Inc. an Ohio nonprofit corporation to be formed for the purpose of governing the District (the "Corporation"), all in accordance with the Act. The articles of incorporation of the Corporation are attached to and incorporated into this Petition as Exhibit D. The Board will consist of at least five individuals. The Board will have all powers authorized by the Act. Pursuant to the Act, one board member will be a person appointed by and serving at the pleasure of the Council of the City (the "City Council"). One board member will be the City Manager or a person appointed and serving at the pleasure of the City Manager who is involved in planning or economic development functions for the City. The remaining board members will be persons elected by, designated by, or carrying the proxy of the members of the District in accordance with Ohio Revised Code Sections 1710.03, and the qualifications of the remaining members will be set forth in the Articles of Incorporation or the Code of Regulations of the District in accordance with Ohio Revised Code Section 1702.27.

The Petitioner acknowledges and agrees that the Board, in its sole discretion and as authorized by Ohio Revised Code Section 1702.33, may delegate authority to an executive committee. Petitioner further acknowledges and agrees that the Board, in its sole discretion and as authorized by Ohio Revised Code Sections 1702.12, 1702.33, and 1710.11, may contract for the provision of services pursuant to the Board's prescribed competitive bidding procedures.

**3. Authority.** The District will be authorized to provide special energy improvement projects pursuant to the Act that will benefit property within the boundaries of the District. The City will be authorized to levy a special assessment on each property within the District that lies within the territorial boundaries of the City to pay for special energy improvement projects, based on the benefits conferred by those special energy improvement projects as further provided for in the Plan and this Petition.

4. **Plan.** As authorized in the Act, the Petitioner requests that the City approve the Plan attached to this petition as Exhibit C. Petitioner acknowledges and agrees that the initial Plan for the District may be modified and supplemented by additional plans for the district approved by the Board or the City Council, all in accordance with the Act.

5. **Boundaries.** A legal description of the parcel, as identified by parcel number, to be included in the District by this Petition is provided in Exhibit A. The District boundaries are further described in Exhibit B.

6. **Special Assessments.** In consideration of the City's acceptance of this Petition and the imposition of the requested Special Assessments, the Petitioner consents and agrees that the Property as identified in Exhibit A shall be assessed for all of the costs of the Authorized Improvements, including any and all architectural, engineering, legal, insurance, consulting, energy auditing, planning, acquisition, installation, construction, surveying, testing and inspection costs; the amount of any damages resulting from the Authorized Improvements and the interest on such amounts; the costs incurred in connection with the preparation, levy, and collection of the special assessments; the cost of purchasing and otherwise acquiring any real estate or interests in real estate; expenses of legal services; costs of labor and material; and trustee fees and other financing costs, including City administrative and legal fees and expenses, incurred in connection with the issuance, sale, and servicing of securities or other obligations issued to provide loans or otherwise to pay costs of the Authorized Improvements in anticipation of its receipt of the special assessments, capitalized interest on, and financing reserve funds for, such securities or other obligations; together with all other necessary expenditures. The Petitioner agrees to pay the Special Assessments in a timely manner whether or not the Petitioner receives annual and timely notices of the Special Assessments.

In consideration of the Authorized Improvements, the Petitioner, for itself and its grantees and other successors with respect to the Property, agree to pay promptly all Special Assessments as they become due, and agree that the determination by City Council of the Special Assessments in accordance with the terms hereof will be final, conclusive and binding upon the Petitioner and the Property. In further consideration of the Authorized Improvements, the Petitioner covenants and agrees to disclose, upon the transfer of the Property or any portion of the Property to be special assessed for the actual costs of the Authorized Improvements set forth in Exhibit C, in the deed to the transferee or in a separate instrument recorded with respect to the Property the existence of any outstanding Special Assessment for the Authorized Improvements and to require that transferee covenant to disclose that information in any subsequent deed or in a separate instrument recorded with respect to the Property at the time of the subsequent transfer so long as the Special Assessments remain unpaid. As a condition to each subsequent transfer while the Special Assessments remain unpaid, the Petitioner further covenants and agrees to provide expressly in the deed to any transferee or in a separate instrument recorded with respect to the Property at the time of the subsequent transfer (a) for the acquisition by the transferee of the Property subject to any outstanding Special Assessment and the transferee's assumption of responsibility for payment thereof and for the waiver by the transferee of any rights that the Petitioner has waived pursuant to this Petition, and (b) the requirement that each transferee from time to time of the Property covenant to include in the deed to any subsequent transferee or in a

separate instrument recorded with respect to the Property at the time of the subsequent transfer the conditions described in clause (a) so long as the Special Assessments remain unpaid.

The Petitioner further acknowledges and confirms that the Special Assessments set forth in this Petition and in Exhibit C are proportionate to, and do not exceed, the special benefits to be conferred on the Property by the Authorized Improvements identified in this Petition. The Petitioner further consents to the levying of the Special Assessments against the Property by the City Council. The Petitioner acknowledges that these Special Assessments are fair, just, and equitable, and that they are being imposed at the specific request of the Petitioner.

**7. Waiver of Notices and Process.** The Petitioner expressly waives notice and publication of all resolutions, legal notices, and hearings provided for in the Ohio Revised Code with respect to the Authorized Improvements and the Special Assessments, particularly those in Ohio Revised Code Chapters 727 and 1710, and consents to proceeding with the Authorized Improvements. Without limiting the foregoing, but only with regard to the Authorized Improvements and Special Assessments for the Authorized Improvements for the Project (as defined in Exhibit D), the Petitioner specifically waives any notices and rights under the following Ohio Revised Code Sections:

- The right to notice of the adoption of the Resolution of Necessity under Ohio Revised Code Sections 727.13 and 727.14;
- The right to limit the amount of the Special Assessment under Ohio Revised Code Sections 727.03 and 727.06;
- The right to file an objection to the Special Assessment under Ohio Revised Code Section 727.15;
- The right to the establishment of, and any proceedings by and any notice from, an Assessment Equalization Board under Ohio Revised Code Sections 727.16 and 727.17;
- The right to file any claim for damages under Ohio Revised Code Sections 727.18 through 727.22 and Ohio Revised Code Section 727.43;
- The right to notice that bids or quotations for the Authorized Improvements may exceed estimates by 15%;
- The right to seek a deferral of payments of Special Assessments under Ohio Revised Code Section 727.251; and
- The right to notice of the passage of the Assessing Ordinance under Ohio Revised Code Section 727.26.

The Petitioner consents to proceed immediately with all actions necessary to acquire, install and construct the Authorized Improvements and impose the Special Assessments.

**8. Agricultural Districts.** The Petitioner further agrees not to take any actions, or cause to be taken any actions, to place any of the Property in an agricultural district as provided for in Ohio Revised Code Chapter 929, and if any of the Property is in an agricultural district, the Petitioner, in accordance with Ohio Revised Code Section 929.03, hereby grants permission to collect any assessments levied against such Property.

**9. No Reliance on Estimates.** The Petitioner acknowledges that the Special Assessments set forth in this Petition and its Exhibits are based upon an estimate of costs, and that the final Special Assessments shall be calculated in the same manner, which, regardless of any statutory limitation, may be more or less than the respective estimated assessments for the Authorized Improvements. In the event the final assessments exceed the estimated assessments, the Petitioner, without limitation of the other waivers contained in this Petition, also waives any rights it may now or in the future have to object to those assessments, any notice provided for in Ohio Revised Code Chapters 727 and 1710, and any rights of appeal provided for in those Chapters or otherwise. The Petitioner further acknowledges and represents that the respective final assessments may be levied at such time as determined by the City, regardless of whether or not any of the parts or portions of the Authorized Improvements have been completed.

**10. Obligation to Pay Special Assessments.** The Petitioner further acknowledges that the final assessments for the Authorized Improvements, when levied against the Property, will be payable in cash within 30 days from the date of passage of the ordinance confirming and levying the final assessments and that if any of such assessments are not paid in cash they will be certified to the Auditor of Greene County, as provided by law, to be placed on the tax list and duplicate and collected as other taxes are collected. Notwithstanding the foregoing, however, the Petitioner requests that the unpaid final assessments for the Authorized Improvements shall be payable in 50<sup>1</sup> semi-annual installments, in amounts necessary to pay the costs of the Authorized Improvements, which include, without limitation, interest at an estimated annual rate of 6.48<sup>2</sup>%. The Petitioner hereby acknowledges and agrees that the actual rate of interest shall be determined on or before the date on which the Special Assessments are levied as the rate of interest available to finance the hard costs of the Authorized Improvements as of the date on which the interest rate is fixed, all as further described in Exhibit C.

**11. Waivers.** The Petitioner further waives any and all questions as to the constitutionality of the laws under which Authorized Improvements shall be acquired, installed, or constructed, the proceedings relating to the acquisition, installation, or construction of the Authorized Improvements shall occur, and the jurisdiction of the City is granted. The Petitioner further waives any and all irregularities, errors, and defects, procedural or otherwise, if any, in the levying of the assessments or the undertaking of the Authorized Improvements. The Petitioner specifically waives any and all rights of appeal, including any right of appeal as provided in Ohio Revised Code Title 7, and specifically but without limitation, Ohio Revised Code Chapters 727 and 1710, as well as all such similar rights under the Constitution of the State of Ohio but only with regard to the Authorized Improvements and Special Assessments for the Authorized Improvements for the Project (as defined in Exhibit D). The Petitioner represents that it will not contest, in a judicial or administrative proceeding, the undertaking of the Authorized Improvements, the estimated assessments, the final assessments, and any Special Assessments levied against the Property for the Authorized Improvements, or any other related matters, but only with regard to the Authorized Improvements and Special Assessments for the Authorized Improvements for the Project (as defined in Exhibit D). In no event shall the foregoing waivers

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<sup>1</sup> Preliminary as of April 5, 2019 only; subject to adjustment until the day on which the special assessments are levied.

<sup>2</sup> Estimate as of April 5, 2019 only; subject to adjustment until the day on which the special assessments are levied..

be construed as a waiver by the Petitioner of its rights with regard to any other taxes, whether general taxes, special assessments, or otherwise.

**12. Irrevocability.** The Petitioner acknowledges and understands that the City will be relying upon this Petition in taking actions and expending resources. This Petition therefore shall be irrevocable and shall be binding upon the Petitioner, its successors and assigns, the Property, and any grantees, mortgagees, lessees, or transferees of the Property.

**13. Knowledge of Waivers.** The Petitioner acknowledges that it has had an opportunity to be represented by legal counsel in this undertaking and has knowingly waived the rights identified in this Petition.

**14. Miscellaneous.** The Petitioner acknowledges that the District is being created using a single petition option under the Act and that no further authorization by the Petitioner may be required prior to the implementation of the Plan and the levying of assessments.

This Petition may be executed in several counterparts, each of which will be an original and all of which will constitute one and the same Petition.

**The City Manager and City Council of the City of Beavercreek, Ohio are hereby respectfully requested to approve, by resolution, this Petition, and to levy special assessments against the property subject to this Petition.**

[Balance of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the Petitioner has caused this petition to be executed by its authorized representative, as set forth below.

**PETITIONER:**

**GREENE INNKEEPERS, LLC**

By: [Signature]

Name: HAR S. BHATNAGAR

Title: MANAGING MEMBER

Address for notices to Property Owner:

Greene Innkeepers, LLC

4404 Buckeye Lane, Suite 220

Beavercreek, Ohio 45440

STATE OF OHIO )

COUNTY OF Greene )

SS:

On the 18 day of April, 2019, Har S. Bhatnagar, as the Managing Member of Greene Innkeepers, LLC, personally appeared before me, a notary public in and for the State of Ohio, who acknowledged the execution of the foregoing Petition on behalf of Greene Innkeepers, LLC and that the same was the free act and deed of such officer and of such port authority.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal on the day and year aforesaid.



Judy C Wannemacher  
Notary Public - Ohio  
Miami County  
My Commission Expires May 21, 2023

[Signature]  
Notary Public

**EXHIBIT A**

The Property subject to this Petition is located at the commonly used address 2667 Fairfield Commons Boulevard, Beavercreek, Ohio 45431, with Greene County Auditor Parcel ID No.:

B42000400030006300

**EXHIBIT B**

**DISTRICT BOUNDARIES**

This **Exhibit B** defines the initial boundaries of the Beavercreek Energy Special Improvement District (the “District”), which consists of the parcel designated by Greene County Auditor parcel number as follows:

Parcel ID:

B42000400030006300



**EXHIBIT C**

**PLAN FOR THE BEAVERCREEK ENERGY SPECIAL IMPROVEMENT DISTRICT**

[See attached]

## **BEAVERCREEK ENERGY SPECIAL IMPROVEMENT DISTRICT PROJECT PLAN**

The Beavercreek Energy Special Improvement District (the “District”) will administer a property assessed clean energy (“PACE”) program (the “Program”). The Program will provide financing secured by special assessments on real property for special energy improvement projects. Pursuant to Section 1710.02(F) of the Ohio Revised Code, Greene Innkeepers, LLC, as the initial owner of real property within the District (the “Owner”) authorizes, consents to, and submits to the City of Beavercreek, Ohio (the “City”) for approval this plan for the Program (as the same may be amended and supplemented from time to time in accordance with its terms, the Plan) to provide for the Program’s administration and to set forth the terms and conditions of participation in the Program.

The District is established pursuant to the special energy improvement district provisions of Chapter 1710 of the Ohio Revised Code. This Plan refers to Chapter 1710 and any and all future amendments to the special energy improvement district provisions of Chapter 1710 as the “Act.” Any specific statutory reference contained in this Plan shall also refer to any succeeding or amending statutory provision.

Participation in the District’s Program is limited to property owners who have agreed to add their property to the District and who otherwise meet the Program’s terms and conditions. These terms and conditions are addressed in this Plan, and include, without limitation, an application, a petition, a schedule of assessments to be made on included property (“Assessment Schedule”), and the governing documents forming the District. The District’s governing documents include its Articles of Incorporation, Code of Regulations, resolutions duly adopted by the board of directors of the District, and the applicable resolutions and ordinances of the participating political subdivision where the real property is located (collectively, the “Governing Documents”). As a condition to participation in the District and the Program, each property owner must review and agree to the Governing Documents and further must review, agree to, and execute this Plan, an application, a petition, and an Assessment Schedule. The Governing Documents, this Plan, the applications, the petitions, and the Assessment Schedules are referred to herein collectively as the “District Documents.” In addition to the District Documents, property owners may be required to agree to and execute an agreement to impose special assessments as a condition to receiving financing of special energy improvement projects from the District.

The District Documents establish the terms and conditions of the Program. The Program terms and conditions may be amended from time to time as described in Part X of this Plan. **By agreeing to and executing the District Documents, each property owner consents to the terms and conditions of all District Documents.**

## **I. Purpose of the Program**

The Program is intended to assist property owners, whether private or public, who own real property within participating political subdivisions to obtain financing for special energy improvement projects, as that term is defined in the Act (the "Authorized Improvements"). Obligations, including but not limited to special assessment reimbursement agreements, special assessment revenue bonds and revenue notes, loan obligations or other evidences of indebtedness, and nonprofit corporation securities (collectively, the "Program Obligations") may be issued by the District or on behalf of the District by a third party. Program Obligations or the proceeds from the sale of the Program Obligations may be used to finance Authorized Improvements that benefit properties within the District and any costs incurred by the District in connection with the issuance of Program Obligations. Participating political subdivisions shall levy special assessments on real property included in the District, the payment of which may pay the Program Obligations and the costs of administering the Program. Special assessment payments levied to finance Authorized Improvements will be due and payable by property owners at the same time real property taxes are due; provided, however, that certain Program Obligations may require special assessments to be due and payable by property owners only to the extent that such property owners fail to pay an obligation of the property owner secured by special assessments, such as a loan, in which case special assessments will only be due and payable by property owners if actually levied.

**Nothing in this Plan shall be construed as a representation on the part of any participating political subdivision, the District, the board of directors of the District, or any of the directors, officers, agents, members, independent contractors, or employees of the District or board of directors that the Program is the best financing option available. Property owners are advised to conduct independent research to determine the best course of action.**

## **II. The District's Governance and Program Administrator**

The District shall be governed, pursuant to the District Documents and the Act, by the Board of Directors ("Board") of the Beavercreek Energy Special Improvement District, Inc., a nonprofit corporation organized under the laws of the State of Ohio (the "Corporation") to govern the District.

Pursuant to the Act, other Ohio law, and any Code of Regulations adopted for the governance of the Corporation, the Board may from time to time, and under such conditions as the Board determines, delegate any or all of the authority contained in this Plan to its sub-committee or to an agent, independent contractor, or employee of the District or the Board.

This Plan specifically contemplates that, as authorized in the Act, the District may contract for the services of a "Program Administrator." The Program Administrator may provide, without limitation, the following services: (i) pursuant to Part III of this Plan, developing and administering eligibility guidelines, creating and administering an application, setting criteria and developing a list of pre-approved contractors, procuring resources or cooperating with property

owners to procure resources, and administering referrals; (ii) pursuant to Part IV of this Plan, marketing, program design, cooperating with property owners to implement Authorized Improvements, and other administrative services; and (iii) establishing and administering a revolving loan facility providing financing for certain special energy improvement projects.

### **III. Program Eligibility, Approvals, Financing, and Procurement**

The Board is hereby authorized to create, administer, amend, and abolish a process by which property owners join the Program. The process by which property owners join the Program may include, without limitation, the following requirements:

- (A) Eligibility. The Board is hereby authorized to create, administer, amend, and abolish eligibility requirements for the Program. The Board is further authorized to determine, in each individual case, whether property is eligible for participation in the Program.

To be eligible for participation in the Program, each property owner must file a petition with the Board or the legislative authority of the political subdivision in which the property is located requesting to add its property to the District and requesting the levy of special assessments to be used to pay or secure Program Obligations issued or used to finance Authorized Improvements. Each parcel of real property added to the District must have at least one Authorized Improvement. The petition to add property to the District shall be considered by the District in accordance with this Plan and the other District Documents. If the District approves the petition, it shall submit the petition to the executive officer and legislative body of the participating political subdivision in which the real property is located. A property owner may file more than one petition and may amend or withdraw any petition filed at any time before the petition is approved by the legislative body of the participating political subdivision in which the real property is located. Petitions shall conform to the requirements of Ohio Revised Code Chapter 1710 and any requirements of the Board.

To be eligible for participation in the Program, each property owner must agree to be bound by the terms of this Plan. The Plan for the District may be amended and supplemented from time to time in accordance with its terms, including, specifically, by supplements to the Plan which identify additional Authorized Improvements within the District to be subject to the Plan or add property to the District and subject such additional property to the Plan. To be eligible for participation in the Program, each property owner, with the exception of the Owner, must file a supplement to this Plan (the "Supplemental Plan") with the Board and the clerk of the legislative body of the participating political subdivision in which the real property is located identifying the Authorized Improvements to be undertaken as part of the Plan applicable to real property within the District or to be added to the district. Supplemental Plans shall include such other information as may be required by the Board. Supplemental Plans

shall conform to the requirements of Ohio Revised Code Chapter 1710 and any requirements of the Board.

- (B) Application. The Board is hereby authorized to create, administer, amend, and abolish an application, including a pre-application, for participation in the Program. The Board further may set the terms and conditions for the application's use and evaluation.
- (C) Contractors. The Board is hereby authorized to require property owners to complete Authorized Improvements through the work of pre-approved contractors. The Board is further authorized to create criteria for the approval of contractors and to determine which contractors meet the criteria and are approved. The Board may communicate which contractors have been pre-approved to property owners by any means the Board deems appropriate, and the Board shall determine whether property owners comply with its pre-approved contractor's requirements.

**Nothing in this Plan or the District Documents shall be construed to be a recommendation or guarantee of reliability of pre-approved contractors by any participating political subdivision, the District, the Board, or any of the directors, officers, agents, members, independent contractors, or employees of the District or Board.**

- (D) Procurement and Referrals. The Board is hereby authorized to procure supplies, services, contracts, financing, and other resources related to the completion of Authorized Improvements. The Board is further authorized to refer property owners to suppliers, service providers, contractors, lenders, and the providers of other resources related to the completion of Authorized Improvements and the administration of District activities.

Pursuant to the Act, the Board shall adopt written rules prescribing competitive bidding procedures for the District and for Authorized Improvements undertaken by the District on behalf of property owners, which competitive bidding procedures may differ from competitive bidding procedures applicable to the City or the procedures in Chapter 735 of the Ohio Revised Code and may specify conditions under which competitive bidding is not required. Except as specified in the Act and in this Plan, the District Documents shall not be construed to eliminate or alter the competitive bidding procedures applicable to the City as a participating political subdivision.

- (E) Financing. The Board is hereby authorized to finance Authorized Improvements through the use or issuance of Program Obligations. The Board may hire such legal and financial professionals as may be required to successfully finance Authorized Improvements through the use or issuance of Program Obligations.

#### **IV. Program Services**

The Board is hereby authorized to provide ongoing services to the District, its property, and the property owners. All services provided under this Plan shall be deemed to be services provided in furtherance of Authorized Improvements provided under this Plan. Such services, without limitation, may include the following:

- (A) Program Design. The Board is hereby authorized to design comprehensive services to establish and maintain the Program's legal and programmatic framework.
- (B) Program Administration. The Board is hereby authorized to educate the public on the Program and its purposes, market the program to the public, process applications, verify aspects of the Authorized Improvements, assure the Program's overall quality and the quality of Authorized Improvements, serve customers, and assist property owners in the origination and closing processes.
- (C) Marketing. The Board is hereby authorized to market the Program and promote the District's image through means such as developing literature and brochures, conducting public relations, collecting data, managing information, cooperating with members, creating electronic and print marketing materials, and holding special events.
- (D) Authorized Improvement Implementation. The Board is hereby authorized to cooperate with property owners for the implementation of Authorized Improvements, including cooperating with property owners for the addition of property to the District and the approval of petitions and Supplemental Plans by participating political subdivisions and the Board.
- (E) Tracking and Administration of Program Obligations. The Board is hereby authorized to create, administer, amend, and abolish procedures for the tracking and administration of Program Obligations issued or used to finance Authorized Improvements. Without limitation, the administration of special assessments may include reporting delinquent special assessments, following-up with delinquent property owners, and coordinating with delinquent property owners. The Board may hire such professionals as may be required to successfully track and administer Program Obligations.
- (F) Administering Special Assessments. The Board is hereby authorized to create, administer, amend, and abolish procedures for the administration of special assessments levied pursuant to the District Documents. Without limitation, the administration of special assessments may include calculating the amount of special assessments, preparing certifications of special assessments for the county auditor, billing the special assessments, and considering property owners' claims regarding the calculation or billing of special assessments. The Board may hire

such professionals as may be required to successfully administer special assessments.

- (G) Budgeting. The Board shall provide for the production of an annual report describing the District's budget, services delivered, revenues received, expenditures made, and other information about the District's activities. The annual report shall be made available to the Board and to the District's members. The Board may hire such professionals as may be required to successfully account for all District finances.
- (H) Auditing. The Board is hereby authorized to provide for an audit of the District in such manner as the Board deems appropriate. The Board may hire such professionals as may be required to successfully audit the District.
- (I) Other Services. The Board is hereby authorized to provide any other services authorized by the Act.

## **V. Fees**

Program Costs. The Board is hereby authorized to charge to property owners, as costs of administering the Program, any costs permitted by the Act. Such costs may include, without limitation, the following:

- (A) The cost of creating and operating the District, including creating and operating the Corporation, hiring employees and professional services, contracting for insurance, and purchasing or leasing office space or office equipment;
- (B) The cost of planning, designing, and implementing Authorized Improvements or services under this Plan or any Supplemental Plan, including payment of architectural, engineering, legal, appraisal, insurance, consulting, energy auditing, and planning fees and expenses, and, for services under this Plan or any Supplemental Plan, the management, protection, and maintenance costs of public or private facilities;
- (C) Any court costs incurred by the District in implementing this Plan or any Supplemental Plans;
- (D) Any damages resulting from implementing this Plan or any Supplemental Plan;
- (E) The costs of issuing, monitoring, paying interest on, and redeeming or refunding Program Obligations issued or used to finance Authorized Improvements or services under this Plan or any Supplemental Plan; and
- (F) The costs associated with the sale, lease, lease with an option to purchase, conveyance of other interests in, or other contracts for the acquisition,

construction, maintenance, repair, furnishing, equipping, operation, or improvement of the District's territory, or between the District and any owner of property in the District on which an Authorized Improvement has been acquired, installed, equipped, or improved.

Pursuant to the Act, such Program costs may be included in the special assessments levied on real property within the District.

Application Fee. The Board is hereby authorized to set and charge an application fee for Program services provided by the District. The application fee may be non-refundable. The application fee may be credited to the cost of Authorized Improvements if the application is approved and an Authorized Improvement is made to the property for which application was made.

## **VI. Energy Efficiency and Renewable Energy Regulations and Requirements**

Energy Efficiency Reporting Requirements. Ohio Revised Code Section 1710.061 requires the Board to submit a quarterly report to each electric distribution utility ("EDU") with a District Authorized Improvement within the EDU's certified territory. The quarterly report submitted to the EDU must include the total number and a description of each new and ongoing District Authorized Improvement that produces energy efficiency savings or reduction in demand and other additional information that the EDU needs to obtain credit under Ohio Revised Code Section 4928.66 for energy efficiency savings or reduction in demand from such projects. The Board is hereby authorized to submit quarterly reports due required under Ohio Revised Code Section 1710.061. Property owners shall comply with Board requirements for information gathering and reporting to ensure Board compliance with Ohio Revised Code Section 1710.061.

Energy Efficiency Credits. The Board is hereby authorized to adopt rules governing energy efficiency credits associated with Authorized Improvements financed with Program Obligations or the proceeds of Program Obligations. Property owners shall comply with Board requirements in furtherance of energy efficiency credit programs.

Renewable Energy Credits. The Board is hereby authorized to adopt rules governing renewable energy credits associated with Authorized Improvements financed with Program Obligations or the proceeds of Program Obligations. Property owners shall comply with Board requirements in furtherance of renewable energy credit programs.

Monetizing Other Energy Efficiency or Renewable Energy Attributes. The Board is hereby authorized to adopt rules governing the monetization of any energy efficiency or renewable energy attributes of any Authorized Improvements financed with Program Obligations or the proceeds of Program Obligations. Property owners shall comply with Board requirements in furtherance of the monetization of such attributes.



## **VII. Statutory Requirements**

As provided in the District Documents:

- (A) Additional territory may be added to the District in accordance with the Act and the rules established by the Board pursuant to Part III of this Plan.
- (B) The District Documents may be amended or supplemented in accordance with their terms.
- (C) As described in this Plan, the Board is authorized to implement and amend this Plan, any Supplemental Plan, and any other plans for Authorized Improvements, public improvements, and public services, all in accordance with the Act.
- (D) The public improvements to be provided by the District are the Authorized Improvements identified in the petition and Supplemental Plan. The area where the Authorized Improvements will be undertaken will be the area identified in each petition requesting formation of the District or in any petition requesting addition of real property to the District. The method of assessment shall be in proportion to the special benefits received by each property owner within the District as a result of Authorized Improvements.
- (E) For the purpose of levying an assessment, the Board may combine levies for Authorized Improvements and public services into one special assessment to be levied against each specially benefited property in the District.

## **VIII. Changes in State and Federal Law**

The ability to issue or use Program Obligations to finance Authorized Improvements is subject to a variety of state and federal laws. If these laws change after property owners have applied to the District for financing, the District may be unable to fulfill its obligations under this Plan. **The District shall not be obligated to implement any provision of this Plan which is contrary to state or federal law. The District shall not be liable for any inability to finance Authorized Improvements as a result of state and federal law or any changes in state and federal law which reduce or eliminate the effectiveness of financing Authorized Improvements through the District's Program.**

## **IX. Releases and Indemnification**

The District has been created with the approval of the City of Beavercreek, Ohio, as a participating political subdivision, for the purposes of implementing this Plan and administering the Program. The District and any participating political subdivision shall be neither responsible nor liable for the installation, operation, financing, refinancing, or maintenance of Authorized Improvements. Property owners will be solely responsible for the installation, operation,

financing, refinancing, and maintenance of the Authorized Improvements. Participation in the Program does not in any way obligate the District or any participating political subdivision to ensure the viability of Authorized Improvements. Owners of assessed real property must pay the special assessments regardless of whether the Authorized Improvements are properly installed or operate as expected.

**By agreeing to and executing this Plan, each owner of real property included in the District (other than any political subdivision that owns real property included in the District) agrees to release, defend, indemnify, and hold harmless the District and the participating political subdivisions, including the members of their legislative authorities and their directors, officers, members, agents, independent contractors, and employees, from and against any claims, actions, demands, costs, damages or lawsuits, arising out of or connected with participation in the Program, except as may arise from the acts or omissions of the District in breach of the Governing Documents, the Petition, or the Plan or the negligence of the District. Any political subdivision that owns real property included in the District agrees to release the District and the participating political subdivisions, including the members of their legislative authorities and their directors, officers, members, agents, independent contractors, and employees, from and against any claims, actions, demands, costs, damages or lawsuits, arising out of or connected with the political subdivision's participation in the Program in its capacity as a property owner.**

#### **X. Changes in the Program Terms; Severability**

Participation in the Program is subject to the District Documents' terms and conditions in effect from time to time during participation. The District reserves the right to change this Plan and the terms and conditions of the District Documents at any time without notice. No such change will affect a property obligation to pay special assessments as set forth in the District Documents.

If any provision of the District Documents is determined to be unlawful, void, or for any reason unenforceable, that provision shall be severed from these District Documents and shall not affect the validity and enforceability of any remaining provisions.

#### **XI. Disclosure of Property Owner Information**

The District and any participating political subdivision may disclose information of the District to any agent of the District or to third parties when such disclosure is essential either to the conduct of the District's business or to provide services to property owners, including but not limited to where such disclosure is necessary to (i) comply with the law (ii) enable the District and participating political subdivisions and their agents to provide services or otherwise perform their duties, and (iii) obtain and provide credit reporting information. In order to receive funding for the Program and to enable communication regarding the State of Ohio's energy programs, property owners' names and contact information may be disclosed to their current electric utilities. Property owners' names, contact information, and utility usage data further may be disclosed to the District and its agents for the purpose of conducting surveys and evaluating the

Program. The District shall not disclose personal information to third parties for telemarketing, e-mail, or direct mail solicitation unless required to by law or court order.

**Each owner of real property located within the District acknowledges that the District is subject to Ohio public records laws, including Ohio Revised Code Section 149.43 *et seq.* Each property owner that executes this Plan agrees to the disclosure of certain property owner information as stated in this Part XI.**

## **XII. Initial Authorized Improvements**

The Owner has requested and consented to certain special assessments to be levied by the District with respect to certain real property owned by the Owner, which Property is described more specifically in **Attachment 1** attached to this Plan (the "Property").

A schedule of special assessments to be levied on the Property to pay the costs of the Authorized Improvements is attached to this Plan in **Attachment 2**. The Owner hereby consents and agrees that the schedule of special assessments shown in **Attachment 2** represents the final hard costs of the Authorized Improvements described below, together with the rate of interest expected to be available for financing the costs of the Authorized Improvements and certain administrative and loan servicing fees. The Owner hereby acknowledges and agrees that the rate of interest available to finance the hard costs of the Authorized Improvements is subject to adjustment until the day on which the special assessments are levied. The Owner hereby authorizes the City to cause the special assessments to be levied and collected in amounts substantially similar to the amounts shown on **Attachment 2**, adjusted as necessary to accurately reflect the rate of interest available to finance the hard costs of the Authorized Improvements on the day on which the special assessments are levied, which collectively are the amounts necessary to pay the costs of financing the Authorized Improvements.

A detailed description of the Authorized Improvements is attached to this Plan in **Attachment 2**.

BY EXECUTING THIS PLAN, THE PROPERTY OWNER IDENTIFIED BELOW  
HEREBY AUTHORIZES AND CONSENTS TO THIS PLAN AND AGREES TO  
PERFORM THE OBLIGATIONS OF THE PROPERTY OWNER CONTAINED IN  
THIS PLAN.

Date: 4/18/19, 2019

Property Owner:  
GREENE INNKEEPERS, LLC

By: HSBhatnagar

Name: HAR S. BHATNAGAR

Title: MANAGING MEMBER

Address for notices to Property Owner:

Greene Innkeepers, LLC  
4404 Buckeye Lane, Suite 220  
Beavercreek, Ohio 45440

[Property Owner Consent to Plan]

**PLAN—ATTACHMENT 1**

**LEGAL DESCRIPTION OF PROPERTY**

The Property subject to this Project Plan is located at the commonly used address 2667 Fairfield Commons Boulevard, Beavercreek, Ohio 45431, with Greene County Auditor Parcel ID No. B42000400030006300.

## PLAN—ATTACHMENT 2

The real property owned by Greene Innkeepers, LLC at 2667 Fairfield Commons Boulevard, Beavercreek, Ohio 45431 is the location at which the special energy improvements described below shall be constructed and installed, and shall exist (the "Project"). The legal description of the property is set forth on the attached Attachment A. The property will be subject to special assessments for energy improvements in accordance with Ohio Revised Code Chapter 1710.

The Project is expected to consist of the following special energy improvement projects:

- Installation of high-efficiency building envelope and high-performance windows;
- Interior lighting improvements, including installation of LED lighting;
- HVAC system efficiency improvements;
- Installation of energy-efficient domestic hot water plumbing systems; and
- Installation of low flow showers designed to decrease water usage.

Total assessment costs: \$6,206,825.00<sup>1</sup>

Estimated average semi-annual special assessments for 25<sup>2</sup> years: \$124,136.50<sup>3</sup>

Number of semi-annual assessments: 50

First semi-annual installment due: approximately January 31, 2020

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<sup>1</sup> Estimate as of April 5, 2019 only; subject to adjustment until the day on which the special assessments are levied.

<sup>2</sup> Estimate as of April 5, 2019 only; subject to adjustment until the day on which the special assessments are levied.

<sup>3</sup> Estimate as of April 5, 2019 only; subject to adjustment until the day on which the special assessments are levied.

The schedule of Special Assessments for the Project is as follows:

Special Assessment Payment Date*	Special Assessment Payment Amount**
1/31/2020	\$124,136.50
7/31/2020	\$124,136.50
1/31/2021	\$124,136.50
7/31/2021	\$124,136.50
1/31/2022	\$124,136.50
7/31/2022	\$124,136.50
1/31/2023	\$124,136.50
7/31/2023	\$124,136.50
1/31/2024	\$124,136.50
7/31/2024	\$124,136.50
1/31/2025	\$124,136.50
7/31/2025	\$124,136.50
1/31/2026	\$124,136.50
7/31/2026	\$124,136.50
1/31/2027	\$124,136.50
7/31/2027	\$124,136.50
1/31/2028	\$124,136.50
7/31/2028	\$124,136.50
1/31/2029	\$124,136.50
7/31/2029	\$124,136.50
1/31/2030	\$124,136.50
7/31/2030	\$124,136.50
1/31/2031	\$124,136.50
7/31/2031	\$124,136.50
1/31/2032	\$124,136.50
7/31/2032	\$124,136.50
1/31/2033	\$124,136.50
7/31/2033	\$124,136.50
1/31/2034	\$124,136.50
7/31/2034	\$124,136.50
1/31/2035	\$124,136.50
7/31/2035	\$124,136.50
1/31/2036	\$124,136.50
7/31/2036	\$124,136.50
1/31/2037	\$124,136.50
7/31/2037	\$124,136.50
1/31/2038	\$124,136.50
7/31/2038	\$124,136.50
1/31/2039	\$124,136.50
7/31/2039	\$124,136.50
1/31/2040	\$124,136.50
7/31/2040	\$124,136.50

1/31/2041	\$124,136.50
7/31/2041	\$124,136.50
1/31/2042	\$124,136.50
7/31/2042	\$124,136.50
1/31/2043	\$124,136.50
7/31/2043	\$124,136.50
1/31/2044	\$124,136.50
7/31/2044	\$124,136.50

\* Pursuant to Ohio Revised Code Chapter 323, the Special Assessment Payment Dates identified in this Exhibit B are subject to adjustment by the Greene County Auditor under certain conditions.

\*\* Pursuant to Ohio Revised Code Section 727.36, the Greene County Auditor may charge and collect a fee in addition to the amounts listed in this Exhibit B.



**EXHIBIT D**

**ARTICLES OF INCORPORATION  
OF THE  
BEAVERCREEK ENERGY SPECIAL IMPROVEMENT DISTRICT, INC.**

[See attached]

**ARTICLES OF INCORPORATION  
OF THE  
BEAVERCREEK ENERGY SPECIAL IMPROVEMENT DISTRICT, INC.**

**FIRST:  
NAME**

Name of Corporation: The name of the Corporation shall, at any time and from time to time be the unique proper name of each participating political subdivision, as defined in Ohio Revised Code (ORC) Section 1710.02(E), of the special improvement district governed by the Board of Directors of the Corporation, in alphabetical order, separated by commas, and followed by the words "Energy Special Improvement District, Inc." For demonstration purposes, as of the adoption of this Article First, the name of the Corporation shall be "Beavercreek Energy Special Improvement District, Inc."

**THIRD:  
PURPOSE**

The purpose for which the Corporation is formed shall be:

- (A) To govern the Beavercreek Energy Special Improvement District, a special improvement district (the District) created under ORC Chapter 1710. The District will be authorized to provide special energy improvement projects pursuant to ORC Chapter 1710 within the boundaries of the District, including energy efficiency and clean and renewable energy projects. The Corporation will be conducive to and promote the public health, safety, peace, convenience, and general welfare by creating projects that conserve energy and create a cleaner environment, lead to energy independence, create jobs and economic growth and development, and promote the general welfare within the District and the participating political subdivisions.
- (B) To engage in any lawful act, activity, or business not contrary to, and for which a nonprofit corporation may be formed under, the laws of the State of Ohio. The City of Beavercreek, Ohio (the City) is the initial participating political subdivision. All other municipal corporations and townships which duly and validly add real property to the District shall be a participating political subdivision. Each participating political subdivision will be authorized to levy a special assessment on each property within their respective territory within the District to pay for such improvements, based on the benefits those special energy improvement projects confer.
- (C) To have and exercise all powers, rights, and privileges conferred by the laws of the State of Ohio on nonprofit corporations or on special improvement districts, including, but not limited to, buying, leasing, or otherwise acquiring and holding, using, or otherwise enjoying and selling, leasing, or otherwise disposing of any interest in any property, real or personal, of whatever nature and wherever situated, and buying and selling renewable energy credits, stocks, bonds, or any other security of any issuer as the Corporation by action of its Board may, at

any time and from time to time, deem advisable.

- (D) The reasons for establishing the District include enhancing public health, safety, peace, convenience, and welfare by developing and assisting in developing special energy improvement projects that reduce the territory's carbon footprint, promote the District as a location for green technology job creation, benefit property within the District, and improve the environment.

**FOURTH:**  
**RESTRICTIONS**

In accordance with R.C. Chapter 1702, no part of the net earnings of the Corporation shall inure to the benefit of any private person, including any Director, officer, or member of the Corporation, except the Corporation shall be permitted to pay reasonable compensation for services actually rendered to the Corporation, or allowed by the Corporation as a reasonable allowance for authorized expenditures incurred on behalf of the Corporation.

**FIFTH:**  
**MEMBERS**

The members of the Corporation (Members) shall be those persons or organizations described in the Code of Regulations. The annual meeting of Members shall be determined by the Board of Directors (Board) as described in the Code of Regulations.

**SIXTH:**  
**BOARD OF**  
**DIRECTORS**

The Corporation shall be controlled and managed under the direction of the Board. The Board shall at all times consist of at least five individuals (individually a Director). The Board shall consist of the following Directors:

- (A) The municipal executive, as defined in ORC Section 1710.01(D), of each participating political subdivision of the District, or an employee of each participating political subdivision who is involved with its planning or economic development functions and who shall be appointed by, and serve at the pleasure of, participating political subdivision's municipal executive; provided, however, that for any township which may become a participating political subdivision the term "municipal executive" shall mean any executive or administrative person or body so designated by the township;
- (B) A person appointed by and serving at the pleasure of the legislative authority of each participating political subdivision of the District;
- (C) Members or executive representatives of Members elected, designated, or appointed by the Members as described in the Code of Regulations of the Corporation.

The Board of Directors of the Corporation from time to time shall constitute the Board of Directors of the District under ORC Chapter 1710.

**SEVENTH:**

The territory within the District shall be described generally as that portion of

TERRITORY

the participating political subdivisions consisting of property owned by each property owner within a participating political subdivision that has petitioned the participating political subdivision for the development of a special energy improvement project, as that term is defined in ORC Section 1710.01(I). As provided in ORC Section 1710.02(A), the territory in the District may be noncontiguous if at least one special energy improvement project is designated for each parcel of real property included in the District. As further provided in Section 1710.02(A), additional territory may be added to the District for the purpose of developing and implementing plans for special energy improvement projects if at least one special energy improvement project is designated for each parcel of real property included within that additional territory and the addition of territory is authorized by the plan for the District under Chapter 1710. The addition of such territory shall be authorized in the plan for the District.

The following is a listing of properties that are initially included in the District, which are identified by parcel number:

2667 Fairfield Commons Boulevard, Beavercreek, Ohio 45431, Greene  
County Parcel No. B42000400030006300

EIGHTH:  
CERTAIN  
TRANSACTIONS

No person shall be disqualified from being a Director of the Corporation because he or she is or may be a party to, and no Director of the Corporation shall be disqualified from entering into, any contract or other transaction to which the Corporation is or may be a party.

No contract, action, or other transaction shall be void or voidable because any Director or officer or other agent of the Corporation is a party to it, or otherwise has any direct or indirect interest in that contract, action, or transaction or in any other party to it, or because any interested director or officer or other agent of the Corporation authorizes or participates in the authorization of the contract, action, or transaction, provided that:

The material facts as to such interest and as to the contract, action, or transaction are disclosed or are otherwise known to the Board or applicable committee of Directors at the time the contract, action, or transaction is authorized, and the Directors or the members of the committee, in good faith reasonably justified by the facts, authorize the contract, action, or transaction by at least a majority vote of the disinterested Directors or disinterested members of the committee, even though such disinterested Directors or members are less than a quorum; or

The material facts as to the interest and as to the contract, action, or transaction are disclosed or are otherwise known to the member at the time the contract, action, or transaction is authorized and the member authorizes the contract, action, or transaction; or the contract, action or transaction (i) is not

less favorable to the Corporation than an arm's length contract, action, or transaction in which no director or officer or other agent of the Corporation has any interest or (ii) is otherwise fair to the Corporation as of the time it is authorized.

Any interested Director may be counted in determining the presence of a quorum at any meeting of the Board or any committee of the Board which authorizes the contract, action, or transaction.

NINTH:  
DISSOLUTION

The existence of the Corporation shall be perpetual, provided however, that the Corporation may be dissolved in accordance with the procedure proscribed under ORC Chapter 1710.13. No rights or obligations of any person under any contract, or in relation to any bonds, notes, or assessments made under this chapter, shall be affected by the dissolution of the Corporation or the repeal of a plan, except with the consent of that person or by order of a court with jurisdiction over the matter. Upon dissolution of the Corporation, any assets or rights of the Corporation, after payment of all bonds, notes, or other obligations of the Corporation, shall be deposited in a special account in the treasury of each participating political subdivision, prorated among all participating political subdivisions to reflect the percentage of the District's territory within that political subdivision, to be used for the benefit of the territory that made up the District.

Notwithstanding anything herein to the contrary, no part of the Corporation's income will be distributed to any entity other than a political subdivision of a state or an organization the income of which is excluded from gross income under Internal Revenue Code section 115(1).

TENTH:  
AMENDMENT

Any provision of these Articles of Incorporation may be amended only (a) by the affirmative vote of a majority of the Members of the Corporation at any meeting at which a quorum is present and (b) after receipt of approval of such amendment by resolution of the legislative authority of each participating political subdivision; provided that such amendment shall be consistent with the applicable provisions of ORC Chapters 1702 and 1710.

**CITY OF BEAVERCREEK, OHIO  
ORDINANCE NO. 19-04**

SPONSORED BY COUNCIL MEMBER \_\_\_\_\_ ON THE 22<sup>ND</sup> DAY OF APRIL, 2019.

**AN ORDINANCE DETERMINING TO PROCEED  
WITH THE ACQUISITION, CONSTRUCTION, AND  
IMPROVEMENT OF CERTAIN PUBLIC  
IMPROVEMENTS IN THE CITY OF  
BEAVERCREEK, OHIO, IN COOPERATION WITH  
THE BEAVERCREEK ENERGY SPECIAL  
IMPROVEMENT DISTRICT AND DECLARING AN  
EMERGENCY.**

**WHEREAS**, the Council (the “City Council”) of the City of Beavercreek, Ohio (the “City”), duly adopted Resolution No. 19-28] on April 22, 2019 (the “Resolution of Necessity”), (i) declaring the necessity of acquiring, constructing, and improving energy efficiency improvements, including, without limitation, LED lighting, building envelope improvements, energy efficient windows, a high-efficiency HVAC system, a high-efficiency water system, and related improvements (the “Project”, as more fully described in the Petition referenced in this Ordinance) located on real property owned by Greene Innkeepers, LLC (together with all future owners of the Project Site, as defined below, the “Owner”) at 2667 Fairfield Commons Boulevard, Beavercreek, Ohio 45431, within the City (as more fully described in Exhibit A to the Petition, as defined below, the “Project Site”); (ii) providing for the acquisition, construction, and improvement of the Project by the Owner, as set forth in the Owner’s *Petition for Creation of Energy Special Improvement District and for Special Assessments for Special Energy Improvement Projects* (the “Petition”) and the *Beavercreek Energy Special Improvement District Plan* (the “Plan”) including by levying and collecting special assessments upon and from the Project Site (the “Special Assessments”) in an amount sufficient to pay the costs of the Project, which is estimated to be \$6,206,825.00, and which includes other related costs of financing the Project, including, without limitation, the payment of principal of and interest on nonprofit corporate obligations issued to pay the costs of the Project and other interest, financing, credit enhancement, and issuance expenses, including City administrative and legal fees and expenses, and ongoing trustee fees and Beavercreek Energy Special Improvement District (“District”) administrative fees and expenses; and (iii) determining that the Project will be treated as a special energy improvement project to be undertaken cooperatively by the City and the District; and

**WHEREAS**, the claims for damages alleged to result from, and objections to, the Project have been waived by 100% of the affected property owners and no claims for damages or objections have been filed.

**NOW, THEREFORE, BE IT ORDAINED** by the Council of the City of Beaver Creek, Ohio:

**SECTION 1.** Each capitalized term used in this Ordinance where the rules of grammar would otherwise not require and not otherwise defined in this Ordinance or by reference to another document shall have the meaning assigned to it in the Resolution of Necessity.

**SECTION 2.** This City Council declares that its intention is to proceed with the acquisition, construction, and improvement of the Project described in the Petition and the Resolution of Necessity. The Project shall be made in accordance with the provisions of the Resolution of Necessity and with the plans, specifications, profiles, and estimates of cost previously approved and now on file with the City Fiscal Officer (the "Fiscal Officer").

**SECTION 3.** The Special Assessments to pay costs of the Project, which are estimated to be \$6,206,825.00, including other related financing costs incurred in connection with the issuance, sale, and servicing of securities, nonprofit corporate obligations, or other obligations issued to provide a loan to the Owner or otherwise to pay costs of the Project in anticipation of the receipt of the Special Assessments, capitalized interest on, and financing reserve funds for, such securities, nonprofit corporate obligations, or other obligations so issued, including any credit enhancement fees, trustee fees, District administrative fees and expenses, and City administrative and legal fees and expenses, shall be assessed against the Project Site in the manner and in the number of annual installments provided in the Petition and the Resolution of Necessity. Each annual Special Assessment payment represents the payment of a portion of the principal of and interest on obligations issued to pay the costs of the Project and the scheduled amounts payable as the District administrative fee and the trustee fee. The Special Assessments shall be assessed against the Project Site commencing in tax year 2019 for collection in 2020 and shall continue through tax year 2043 for collection in 2044. In addition to the Special Assessments, the County Auditor of Greene County, Ohio (the "County Auditor"), may impose a special assessment collection fee with respect to any annual payment certified to the County Auditor for collection, which amount, if any, will be added to the Special Assessments by the County Auditor.

**SECTION 4.** The estimated Special Assessments for costs of the Project, which have been prepared and filed in the office of the City Council and in the office of the Fiscal Officer in accordance with the Resolution of Necessity, are adopted, and the usefulness of the

services and improvements provided pursuant to the plan are determined to be 26 years.

**SECTION 5.**

In compliance with Ohio Revised Code Section 319.61, the Fiscal Officer, the City Clerk, and any of their designees are authorized and directed, individually or together, to deliver a certified copy of this Ordinance to the County Auditor within 15 days after the date of its passage.

**SECTION 6.**

All contracts for the construction of the Project will be let in the manner provided by law, subject to the provisions of the Ohio Revised Code, the Petition, and the Plan, and the costs of the Project shall be financed as provided in the Resolution of Necessity.

**SECTION 7.**

It is found and determined that all formal actions of this City Council concerning and relating to the adoption of this Ordinance were adopted in an open meeting of this City Council, and that all deliberations of this City Council that resulted in such formal action were in meetings open to the public in compliance with the law.

**SECTION 8.**

This Ordinance is declared to be an emergency measure necessary for the immediate preservation of the public health, safety, and welfare of the City and for the further reason that this Ordinance is required to be immediately effective in order to allow the City to take advantage of financing available to it for a limited time. Therefore, this Ordinance shall be in full force and effect immediately upon its adoption and certification.

**SECTION 9.**

This Resolution shall become effective immediately upon its passage.

THIS RESOLUTION IS ADOPTED BY THE Council of the City of Beavercreek, Ohio this 22<sup>nd</sup> day of April, 2019.

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Bob Stone, Mayor

Attest:

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Dianne Miscisin, Clerk of Council



\_\_\_\_\_ moved for the adoption of the ordinance.

\_\_\_\_\_ seconded the motion.

	Yea	Nay	Absent
Bob Stone .....	_____	_____	_____
Joanna Garcia.....	_____	_____	_____
Charles Curran.....	_____	_____	_____
Melissa Litteral.....	_____	_____	_____
Ryan Rushing.....	_____	_____	_____
Zach Upton.....	_____	_____	_____
Julie Vann.....	_____	_____	_____

**CERTIFICATION**

The undersigned hereby certifies that this Ordinance was duly passed by the Council of the City of Beavercreek, Ohio on \_\_\_\_\_, 2019.

\_\_\_\_\_  
Clerk of Council  
City of Beavercreek, Ohio

RECEIPT OF COUNTY AUDITOR FOR  
LEGISLATION DETERMINING TO  
PROCEED WITH ACQUISITION, CONSTRUCTION,  
AND IMPROVEMENT OF CERTAIN PUBLIC  
IMPROVEMENTS IN THE CITY OF BEAVERCREEK  
IN COOPERATION WITH THE BEAVERCREEK  
ENERGY SPECIAL IMPROVEMENT DISTRICT

I, David A. Graham, the duly elected, qualified, and acting Auditor in and for Greene County, Ohio hereby certify that a certified copy of Ordinance No. 2019-\_\_\_ duly adopted by the Council of the City of Beavercreek, Ohio on \_\_\_\_\_, 2019, determining to proceed with the acquisition, construction, and improvement of certain public improvements in the City of Beavercreek in cooperation with the Beavercreek Energy Special Improvement District, was filed in this office on \_\_\_\_\_, 2019.

WITNESS my hand and official seal at Xenia, Ohio on \_\_\_\_\_, 2019.

[SEAL]

\_\_\_\_\_  
Auditor  
Greene County, Ohio

**CITY OF BEAVERCREEK, OHIO  
ORDINANCE NO. 19-05**

SPONSORED BY COUNCIL MEMBER \_\_\_\_\_ ON THE 22<sup>ND</sup> DAY OF APRIL, 2019.

**A ORDINANCE LEVYING SPECIAL ASSESSMENTS FOR THE PURPOSE OF ACQUIRING, CONSTRUCTING, AND IMPROVING CERTAIN PUBLIC IMPROVEMENTS IN THE CITY OF BEAVERCREEK, OHIO, IN COOPERATION WITH THE BEAVERCREEK ENERGY SPECIAL IMPROVEMENT DISTRICT; AUTHORIZING AND APPROVING AN ENERGY PROJECT COOPERATIVE AGREEMENT BY AND AMONG THE CITY OF BEAVERCREEK, OHIO, THE BEAVERCREEK ENERGY SPECIAL IMPROVEMENT DISTRICT, GREENE INNKEEPERS LLC, AND PACE EQUITY LLC PROVIDING FOR THE FINANCING OF THOSE PUBLIC IMPROVEMENTS; AUTHORIZING AND APPROVING A SPECIAL ASSESSMENT AGREEMENT BY AND BETWEEN THE CITY OF BEAVERCREEK OHIO, THE COUNTY TREASURER OF GREENE COUNTY, OHIO, PACE EQUITY, LLC, THE BEAVERCREEK ENERGY SPECIAL IMPROVEMENT DISTRICT, AND PACE EQUITY LLC REGARDING THOSE SPECIAL ASSESSMENTS; AND DECLARING AN EMERGENCY**

**WHEREAS**, this Council (the “City Council”) of the City of Beavercreek, Ohio (the “City”), duly adopted Resolution No. 19-28 on April 22, 2019 (the “Resolution of Necessity”), and declared the necessity of acquiring, constructing, improving and installing energy efficiency improvements, including, without limitation, LED lighting, building envelope improvements, energy efficient windows, a high-efficiency HVAC system, a high-efficiency water system, and related improvements (the “Project”), as described in the Resolution of Necessity and as set forth in the Petition requesting those improvements; and

**WHEREAS**, this City Council duly adopted Ordinance No. 19-05 on \_\_\_\_\_, 2019 and determined to proceed with the Project and adopted the estimated Special Assessments (as defined in the Resolution of Necessity) filed with the City Fiscal Officer (the “Fiscal Officer”) under the Resolution of Necessity; and

**WHEREAS**, the City intends to enter into an Energy Project Cooperative Agreement (the “Cooperative Agreement”) with the Beavercreek Energy Special Improvement District (the “District”), Greene Innkeepers, LLC (the “Owner”), and PACE Equity LLC (the “Investor”) to provide for, among other things, (i) making the Project Advance (as defined in the Cooperative Agreement) to pay costs of the Project, (ii) the disbursement of the Project Advance for the acquisition and construction of the

Project, and (iii) the transfer of the Special Assessments by the City to the Investor to pay principal and interest and other costs relating to the Project Advance; and

**WHEREAS**, to provide for the security for the Project Advance and for administration of payments on the Project Advance and related matters, the City intends to enter into an agreement with the County Treasurer of Greene County, Ohio (the "County Treasurer"), the District, the Owner, and the Investor (the "Special Assessment Agreement");

**NOW, THEREFORE, BE IT ORDAINED** by the Council of the City of Beavercreek, Ohio:

**SECTION 1.** Each capitalized term used in this Ordinance where the rules of grammar would otherwise not require and not otherwise defined in this Ordinance or by reference to another document shall have the meaning assigned to it in the Resolution of Necessity.

**SECTION 2.** The list of Special Assessments to be levied and assessed on the Project Site in an amount sufficient to pay the costs of the Project, which is \$6,206,825.00, and includes other related financing costs incurred in connection with the issuance, sale, and servicing of securities, nonprofit corporate obligations, or other obligations issued to provide a loan to the District or otherwise to pay costs of the Project in anticipation of the receipt of the Special Assessments, capitalized interest on, and financing reserve funds for, such securities, nonprofit corporate obligations, or other obligations so issued, including any credit enhancement fees, trustee fees, District administrative fees and expenses, and City administrative and legal fees and expenses, which costs were set forth in the Petition and previously reported to this City Council and are now on file in the offices of the City Council and the Mayor, is adopted and confirmed, and that the Special Assessments are levied and assessed on the Project Site. The interest portion of the Special Assessments, together with amounts used to pay administrative expenses, are determined to be substantially equivalent to the fair market rate or rates of interest that would have been borne by securities issued in anticipation of the collection of the Special Assessments if such securities had been issued by the City.

The Special Assessments are assessed against the Property commencing in tax year 2019 for collection in 2020 and shall continue through tax year 2043 for collection in 2044. The semi-annual installments of the Special Assessments shall be collected in each calendar year equal to a maximum semi-annual amount of Special Assessments as shown in Exhibit A, attached to and incorporated into this Ordinance.

The Fiscal Officer initially shall collect the unpaid Special Assessments in place of the County Treasurer of Greene County, Ohio, as provided by Ohio Revised Code Section 727.331. Upon any failure by the Owner to pay any installment of the Special Assessments to the Fiscal Officer as and when due, all unpaid and remaining future Special Assessments shall be certified by the Fiscal Officer to the County Auditor of Greene County, Ohio (the "County Auditor"), pursuant to the Petition and Ohio Revised Code Chapter 727.33, to be placed on the tax list and duplicate and collected with and in the same manner as real property taxes are collected and as set forth in the Petition.

The Special Assessments shall be allocated among the parcels constituting the Project Site as set forth in the Petition and the List of Special Assessments attached to and incorporated into this Ordinance as Exhibit A.

**SECTION 3.**

This City Council finds and determines that the Special Assessments are in proportion to the special benefits received by the Property as set forth in the Petition and are not in excess of any applicable statutory limitation.

**SECTION 4.**

The Owner, for itself and for all its successors in interest as owners of the Project Site, has waived its right to pay the Special Assessments in cash, and all Special Assessments and installments of the Special Assessments shall be certified by the Fiscal Officer to be collected in installments in 50 semi-annual installments commencing in tax year 2019 for collection in 2020 and shall continue through tax year 2043 for collection in 2044.

**SECTION 5.**

The Special Assessments will be used by the City to provide the Project in cooperation with the District in any manner, including assigning the Special Assessments actually received by the City to the District or to another party the City deems appropriate, and the Special Assessments are appropriated for such purposes.

**SECTION 6.**

The Fiscal Officer shall keep the Special Assessments on file in the Office of the Fiscal Officer.

**SECTION 7.**

In compliance with Ohio Revised Code Section 319.61, the Fiscal Officer, the City Clerk, and any of their designees are authorized and directed, individually or together, to deliver a certified copy of this Ordinance to the County Auditor within 20 days after its passage.

**SECTION 8.**

This City Council hereby approves the Cooperative Agreement, a copy of which is on file in the office of the City Council. The City Council, the City Manager, the Mayor, the Fiscal Officer, or any one of them, is authorized to sign and deliver, in the name and on behalf of the City, the Cooperative Agreement, in substantially the form as is now on file with the City Council. The Cooperative Agreement is approved, together with any changes or amendments that are not inconsistent with this Ordinance and not substantially adverse to the City and that are approved by the Law Director and the City Council, the City Manager, the Mayor, the Fiscal Officer, or any one of them, on behalf of the City, all of which shall be conclusively evidenced by the signing of the Cooperative Agreement or amendments to the Cooperative Agreement.

**SECTION 9.**

This City Council hereby approves the Special Assessment Agreement, a copy of which is on file in the office of the City Council. The City Council, the City Manager, the Mayor, the Fiscal Officer, or any one of them, is authorized to sign and deliver, in the name and on behalf of the City, the Special Assessment Agreement, in substantially the form as is now on file with the City Council. The Special Assessment Agreement is approved, together with any changes or amendments that are not inconsistent with this Ordinance and not substantially adverse to the City and that are approved by the Law Director and the City Council, the City Manager, the Mayor, the Fiscal Officer, or any one of them, on behalf of the City, all of which shall be conclusively evidenced by the signing of the Special Assessment Agreement or amendments to the Special Assessment Agreement. The City is authorized to enter into such other agreements that are not inconsistent with the Resolution of Necessity and this Ordinance and that are approved by the Law Director and the City Council, the City Manager, the Mayor, the Fiscal Officer, or any one of them, on behalf of the City, all of which shall be conclusively evidenced by the signing of such agreements or any amendments to them.

**SECTION 10.**

It is found and determined that all formal actions of this City Council concerning and relating to the adoption of this Ordinance were adopted in an open meeting of this City Council, and that all deliberations of this City Council that resulted in such formal action were in meetings open to the public in compliance with the law.

**SECTION 11.**

This Ordinance is declared to be an emergency measure necessary for the immediate preservation of the public health, safety, and welfare of the City and for the further reason that this Ordinance is

required to be immediately effective in order to allow the District to take advantage of financing available to it for a limited time. Therefore, this Ordinance shall be in full force and effect immediately upon its adoption and certification.

**SECTION 12.**

This Resolution shall become effective immediately upon its passage.

THIS RESOLUTION IS ADOPTED BY THE Council of the City of Beavercreek, Ohio this 22<sup>nd</sup> day of April, 2019.

\_\_\_\_\_  
Bob Stone, Mayor

Attest:

\_\_\_\_\_  
Dianne Miscisin, Clerk of Council

\_\_\_\_\_ moved for the adoption of the ordinance.

\_\_\_\_\_ seconded the motion.

	Yea	Nay	Absent
Bob Stone .....	_____	_____	_____
Joanna Garcia.....	_____	_____	_____
Charles Curran.....	_____	_____	_____
Melissa Litteral.....	_____	_____	_____
Ryan Rushing.....	_____	_____	_____
Zach Upton.....	_____	_____	_____
Julie Vann.....	_____	_____	_____

**CERTIFICATION**

The undersigned hereby certifies that this Ordinance was duly passed by the Council of the City of Beavercreek, Ohio on \_\_\_\_\_, 2019.

\_\_\_\_\_  
Clerk of Council  
City of Beavercreek, Ohio

**EXHIBIT A**

**LIST OF SPECIAL ASSESSMENTS AND  
SCHEDULE OF SPECIAL ASSESSMENTS**

LIST OF SPECIAL ASSESSMENTS

<u>Name</u>	<u>Assessed Properties Description</u>	<u>Portion of Benefit and Special Assessment</u>	<u>Amount of Special Assessments</u>
Greene Innkeepers, LLC	Greene Co. Parcel No.: B42000400030006300	100%	\$6,206,825.00



SCHEDULE OF SPECIAL ASSESSMENTS  
FOR GREENE COUNTY PARCEL NO.:

B42000400030006300\*

The following schedule of Special Assessment charges shall be certified for collection in 50 semi-annual installments to be collected with real property taxes in calendar years 2020 through 2044:

<b>Special Assessment Payment Date*</b>	<b>Special Assessment Payment Installment**</b>
1/31/2020	\$124,136.50
7/31/2020	\$124,136.50
1/31/2021	\$124,136.50
7/31/2021	\$124,136.50
1/31/2022	\$124,136.50
7/31/2022	\$124,136.50
1/31/2023	\$124,136.50
7/31/2023	\$124,136.50
1/31/2024	\$124,136.50
7/31/2024	\$124,136.50
1/31/2025	\$124,136.50
7/31/2025	\$124,136.50
1/31/2026	\$124,136.50
7/31/2026	\$124,136.50
1/31/2027	\$124,136.50
7/31/2027	\$124,136.50
1/31/2028	\$124,136.50
7/31/2028	\$124,136.50
1/31/2029	\$124,136.50
7/31/2029	\$124,136.50
1/31/2030	\$124,136.50
7/31/2030	\$124,136.50
1/31/2031	\$124,136.50
7/31/2031	\$124,136.50
1/31/2032	\$124,136.50
7/31/2032	\$124,136.50
1/31/2033	\$124,136.50
7/31/2033	\$124,136.50
1/31/2034	\$124,136.50
7/31/2034	\$124,136.50
1/31/2035	\$124,136.50
7/31/2035	\$124,136.50
1/31/2036	\$124,136.50

7/31/2036	\$124,136.50
1/31/2037	\$124,136.50
7/31/2037	\$124,136.50
1/31/2038	\$124,136.50
7/31/2038	\$124,136.50
1/31/2039	\$124,136.50
7/31/2039	\$124,136.50
1/31/2040	\$124,136.50
7/31/2040	\$124,136.50
1/31/2041	\$124,136.50
7/31/2041	\$124,136.50
1/31/2042	\$124,136.50
7/31/2042	\$124,136.50
1/31/2043	\$124,136.50
7/31/2043	\$124,136.50
1/31/2044	\$124,136.50
7/31/2044	\$124,136.50

\* As identified in the records of the Auditor of Greene County, Ohio, as of April 12, 2019.

\*\* Pursuant to Ohio Revised Code Chapter 323, the Special Assessment Payment Dates identified in this Schedule of Special Assessments are subject to adjustment by the Auditor of Greene County, Ohio, under certain conditions.

\*\*\* The Auditor of Greene County, Ohio, may impose a special assessment collection fee with respect to any annual Special Assessment payment certified to the Auditor for collection. If imposed, this special assessment collection fee will be added by the Auditor of Greene County, Ohio, to each annual Special Assessment payment.

RECEIPT OF COUNTY AUDITOR FOR  
LEGISLATION LEVYING SPECIAL ASSESSMENTS  
FOR THE PURPOSE OF ACQUIRING, CONSTRUCTING,  
AND IMPROVING CERTAIN PUBLIC IMPROVEMENTS  
IN THE CITY OF BEAVERCREEK IN COOPERATION WITH  
THE BEAVERCREEK ENERGY  
SPECIAL IMPROVEMENT DISTRICT

I, David A. Graham, the duly elected, qualified, and acting Auditor in and for Greene County, Ohio hereby certify that a certified copy of Ordinance No. 2019-\_\_\_\_, duly adopted by the Council of the City of Beavercreek, Ohio on \_\_\_\_\_, 2019, levying special assessments for the purpose of acquiring, constructing, and improving certain public improvements in the City of Beavercreek, Ohio in cooperation with the Beavercreek Energy Special Improvement District, including the List of Special Assessments and Schedule of Special Assessments, which Special Assessment charges are levied in fifty (50) semi-annual installments with respect to real property taxes due in calendar years 2020 through 2044, was filed in this office on \_\_\_\_\_, 2019.

WITNESS my hand and official seal at Xenia, Ohio on \_\_\_\_\_, 2019.

[SEAL]

\_\_\_\_\_  
Auditor  
Montgomery County, Ohio

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**ENERGY PROJECT COOPERATIVE AGREEMENT**

By and among

BEAVERCREEK ENERGY SPECIAL IMPROVEMENT DISTRICT, INC.;

GREENE INNKEEPERS, LLC;

PACE EQUITY LLC; and

CITY OF BEAVERCREEK, OHIO

Dated as of \_\_\_\_\_, 2019

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BRICKER & ECKLER LLP

## ENERGY PROJECT COOPERATIVE AGREEMENT

THIS ENERGY PROJECT COOPERATIVE AGREEMENT (the "Agreement") is made and entered into as of \_\_\_\_\_, 2019, between the BEAVERCREEK ENERGY SPECIAL IMPROVEMENT DISTRICT, INC., a nonprofit corporation and special improvement district duly organized and validly existing under the laws of the State of Ohio (the "State") (the "ESID"), GREENE INNKEEPERS, LLC, a limited liability company duly organized and validly existing under the laws of the State of Ohio (the "State") (the "Owner"), PACE EQUITY LLC, a limited liability duly organized and validly existing under the laws of the State of Wisconsin (the "Investor"), and the CITY OF BEAVERCREEK, OHIO, a municipal corporation duly organized and validly existing under the constitution and laws of the State (the "City") (the capitalized terms used in this Agreement and not defined in the preamble and recitals have the meanings stated in **Exhibit A** to this Agreement):

A. The ESID was created under Ohio Revised Code Chapters 1702 and 1710 and established pursuant to Resolution No. \_\_\_\_\_ of the Council of the City of Beavercreek, Ohio, approved on \_\_\_\_\_, 2019. Pursuant to the same action, the Beavercreek Energy Special Improvement District Program Plan (as amended and supplemented from time to time, the "Plan") was adopted as a plan for public improvements and public services under Ohio Revised Code Section 1710.02(F).

B. The ESID is an energy special improvement district and nonprofit corporation duly organized and validly existing under the laws of the State of Ohio to further the public purpose of implementing special energy improvement projects pursuant to the authority in Ohio Revised Code Chapter 1710 and Article VIII, Section 20 of the Ohio Constitution.

C. On \_\_\_\_\_, 2019, by its Resolution No. \_\_\_\_\_, the City Council of the City (the "City Council") approved the Petition for Special Assessments for Special Energy Improvement Projects and Affidavit (the "Petition") submitted by the Owner to the City, together with the Plan.

D. Pursuant to the Plan, the ESID, among other services, shall assist property owners, whether private or public, who own real property within participating political subdivisions to obtain financing for special energy improvement projects.

G. In order to obtain financing for special energy improvement projects and to create special assessment revenues available to pay and repay the costs of special energy improvement projects, the Petition requested that the City Council levy Special Assessments against the Owner's property as more fully described in the Plan.

H. The ESID, the Owner, the Investor, and the City (collectively the "Parties," and each, a "Party") each have determined that the most efficient and effective way to implement the financing, acquisition, installation, equipment, and improvement of energy special improvement projects and to further the public purposes set forth above is through this Agreement, pursuant to the Special Assessment Act and on the terms set forth in this Agreement, with (i) the Investor providing the Project Advance to finance the costs of the special energy improvement projects described in the Plan, (ii) the ESID and the Owner cooperating to acquire, install, equip and

improve special energy improvement projects, (iii) the Owner agreeing to make Special Assessment payments in an aggregate amount that will provide revenues sufficient to pay or repay the permitted costs of the special energy improvement projects, (iv) the City agreeing to assign and transfer all Special Assessment payments actually received by the City to the Investor to repay the Project Advance; and (v) the ESID agreeing to assign, transfer, and set over to the Investor any of its right, title, or interest in and to the Special Assessments which it may have by operation of law, this Agreement, or otherwise; provided that a portion of the Special Assessments may be retained by, or be payable to, the City or the ESID, all pursuant to and in accordance with this Agreement.

I. The Parties each have full right and lawful authority to enter into this Agreement and to perform and observe its provisions on their respective parts to be performed and observed, and have determined to enter into this Agreement to set forth their respective rights, duties, responsibilities, obligations, and contributions with respect to the implementation of special energy improvement projects within the ESID.

NOW, THEREFORE, in consideration of the promises and the mutual representations, warranties, covenants, and agreements contained in this Agreement, the Parties agree as follows; provided, that any obligation of the ESID created by or arising out of this Agreement never shall constitute a general obligation, bonded indebtedness, or a pledge of the general credit of the ESID, or give rise to any pecuniary liability of the ESID, but any such obligation shall be payable solely from the Special Assessments actually received by the ESID, if any; and provided, further, that any obligation of the City created by or arising out of this Agreement never shall constitute a general obligation, bonded indebtedness, or a pledge of the general credit of the City, or give rise to any pecuniary liability of the City, but any such obligation shall be payable solely from the Special Assessments actually received by the City, if any:

#### ARTICLE I: DEFINITIONS

Section 1.1. Use of Defined Terms. In addition to the words and terms defined elsewhere in this Agreement or by reference to another document, words and terms used in this Agreement shall have the meanings set forth in Exhibit A to this Agreement unless the context or use clearly indicates another meaning or intent. Definitions shall apply equally to both the singular and plural forms of any of the words and terms. Words of any gender include the correlative words of the other gender, unless the sense indicates otherwise.

Section 1.2. Interpretation. Any reference in this Agreement to the ESID, the ESID Board, the Owner, the City, the City Council, the Investor, or to any member or officer of any of the foregoing, includes entities or officials succeeding to their respective functions, duties or responsibilities pursuant to or by operation of law or lawfully performing their functions.

Any reference to a section or provision of the Constitution of the State or the Special Assessment Act, or to a section, provision or chapter of the Ohio Revised Code or any other legislation or to any statute of the United States of America, includes that section, provision, or chapter as amended, modified, revised, supplemented, or superseded from time to time; provided, however, that no amendment, modification, revision, supplement, or superseding section, provision, or chapter shall be applicable solely by reason of this provision if it

constitutes in any way an impairment of the rights or obligations of the Parties under this Agreement.

Section 1.3. Captions and Headings. The captions and headings in this Agreement are solely for convenience of reference and in no way define, limit, or describe the scope or intent of any of this Agreement's Articles, Sections, subsections, paragraphs, subparagraphs or clauses.

## ARTICLE II: COOPERATIVE ARRANGEMENTS; ASSIGNMENT OF SPECIAL ASSESSMENTS

Section 2.1. Agreement Between the City, the ESID, and the Investor. The Owner and the ESID have requested the assistance of the Investor and the City in the financing of special energy improvement projects within the ESID. For the reasons set forth in this Agreement's Recitals—which Recitals are incorporated into this Agreement by this reference as a statement of the public purposes of this Agreement and the intended arrangements among the Parties—the City and the ESID have requested the assistance and cooperation of the Investor in the collection and payment of Special Assessments in accordance with this Agreement. The Parties intend this Agreement to be, and it shall be, an agreement among the Parties to cooperate in the financing, acquisition, installation, equipment, and improvement of “special energy improvement projects,” pursuant to Ohio Revised Code Chapter 1710, and as that term is defined in Ohio Revised Code Section 1710.01(I). The Parties intend this Agreement's provisions to be, and they shall be construed as, agreements to take effective cooperative action and to safeguard the Parties' interests.

Upon the considerations stated above and upon and subject to the terms and conditions of this Agreement, the Investor, on behalf of the Parties, shall make the Project Advance available to the Owner to pay the costs of the Project. The City and the ESID shall assign, transfer, set over, and pay the Special Assessments actually received by the City or the ESID, respectively, to the Investor, to pay the costs of the Project at the times and in the manner provided in this Agreement; provided, however, that the City, the ESID, and the Investor intend that the City shall receive all Special Assessments from the County Treasurer and shall transfer, set over, and pay all Special Assessments received from the County Treasurer directly to the Investor. The City, the ESID, and the Investor further intend and agree that the Investor shall pay to the ESID, out of the Special Assessments received by the Investor, a semi-annual fee of \$[ ] for the ESID's administrative expenses; provided, however, that if the amount of Special Assessments received by the Investor in any year are insufficient to pay the principal of, and interest on the Project Advance due in that year and the semi-annual fee of \$[ ] due to the ESID, the Special Assessments received shall first be applied to the payment of interest on the Project Advance, then to the repayment of the principal of the Project Advance, and then to the payment of the semi-annual fee due to the ESID.

Notwithstanding anything in this Agreement to the contrary, any obligations of the City under this Agreement, including the obligation to transfer the Special Assessments received by the City to the Investor, shall be a special obligation of the City and shall be required to be made only from Special Assessments actually received by or on behalf of the City, if any. The City's obligations under this Agreement are not and shall not be secured by an obligation or pledge of any moneys raised by taxation. The City's obligations under this Agreement do not and shall not

represent or constitute a debt or pledge of the City's faith and credit or taxing power, and the ESID, the Owner, and the Investor do not have and shall not have any right to have taxes levied by the City for the transfer of the Special Assessments.

Section 2.2. Special Assessments; City Transfer of Special Assessments.

- (a) The Special Assessment Proceedings. The City has taken all necessary actions required by the Special Assessment Act to levy and collect the Special Assessments on the Property.

Pursuant to Ohio Revised Code Section 727.33, the City has certified the Special Assessments to the County Auditor for collection, and the County Auditor shall collect the unpaid Special Assessments with and in the same manner as other real property taxes and pay the amount collected to the City. The Parties intend that the County Auditor and the County Treasurer shall have the duty to collect the Special Assessments through enforcement proceedings in accordance with applicable law.

- (b) Collection of Delinquent Special Assessments. The ESID and the Investor are hereby authorized to take any and all actions as assignees of and, to the extent required by law, in the name of, for, and on behalf of, the City to collect delinquent Special Assessments levied by the City pursuant to the Special Assessment Act and to cause the lien securing the delinquent Special Assessments to be enforced through prompt and timely foreclosure proceedings, including, but not necessarily limited to, filing and prosecution of mandamus or other appropriate proceedings to induce the County Prosecutor, the County Auditor, and the County Treasurer, as necessary, to institute such prompt and timely foreclosure proceedings. The proceeds of the enforcement of any such lien shall be deposited and used in accordance with this Agreement.

- (c) Prepayment of Special Assessments. The Parties agree that the Special Assessments assessed against the Property and payable to the City pursuant to the Special Assessment Act may be prepaid to the Investor by the Owner in accordance with Section 4.7 of this Agreement. Except as set forth in this Section 2.2(c) and Section 4.7 of this Agreement, the Owner shall not prepay any Special Assessments. Notwithstanding the foregoing, if the Owner attempts to cause a prepayment of the Special Assessments by paying to the County Treasurer any amount as a full or partial prepayment of Special Assessments, and if the City shall have knowledge of the same, the City immediately shall notify the Investor, and, unless provided the express written consent of the Investor, the City shall not cause any reduction in the amount of Special Assessments. Except as specifically provided in this Agreement to the contrary, no other action pursuant to any provision of this Agreement shall abate in any way the payment of the Special Assessments by the owners of property or the transfer of the Special Assessments by the City to the Investor.



- (d) Reduction of Special Assessments. The Parties agree that the Special Assessments may be subject to reduction, but only upon the express written consent or instruction of the Investor. If the Owner causes the Special Assessments to be prepaid in accordance with Sections 2.2(c) and 4.7 of this Agreement, upon the City's receipt of the Investor's express written consent or instruction, the City shall certify to the County Auditor, prior to the last date in the then-current tax year on which municipal corporations may certify special assessments to the County Auditor, a reduction in the amount of Special Assessments collected such that, following such reduction, the amount of Special Assessments remaining to be paid shall be equal to the amounts necessary to pay, as and when due, the remaining outstanding principal of the Project Advance, together with interest at the annual rate of 6.48%, a \$[ ] semi-annual servicing fee to the Investor, and a \$[ ] semi-annual administrative fee to the ESID. The parties acknowledge and agree that County Auditor may calculate, charge, and collect a collection fee on each annual installment of the Special Assessments in an amount to be calculated, charged, and collected by the County Auditor pursuant to Ohio Revised Code Section 727.36, which fee is in addition to the amount of the Special Assessments and other related interest, fees, and penalties. Notwithstanding anything in this Agreement to the contrary, the City shall not cause any reduction in the amount of Special Assessments without the prior written consent or instruction of the Investor.
- (e) Assignment of Special Assessments. The City agrees that it shall establish its funds for the collection of the Special Assessments as separate funds maintained on the City's books and records and to be held in the custody of a bank with which the City maintains a depository relationship. The City hereby assigns to the Investor all of its right, title and interest in and to: (i) the Special Assessments received by the City under this Agreement, (ii) the City's special assessment funds established for the Project, and (iii) any other property received or to be received from the City under this Agreement. The City further shall transfer, set over, and pay the Special Assessments and Delinquency Amounts to the Investor in accordance with this Agreement. The ESID acknowledges and consents to the City's assignment of the Special Assessments to the Investor. The Parties agree that each of the City, the ESID, and the Investor, as assignee of the Special Assessments, is authorized to take any and all actions, whether at law, or in equity, to collect delinquent Special Assessments levied by the City pursuant to law and to cause the lien securing any delinquent Special Assessments to be enforced through prompt and timely foreclosure proceedings, including, but not necessarily limited to, filing and prosecution of mandamus or other appropriate proceedings to induce the County Prosecutor, the County Auditor, and the County Treasurer, as necessary, to institute such prompt and timely foreclosure proceedings.
- (f) Transfer of Special Assessments. The parties anticipate that semi-annual installments of the Special Assessments and Delinquency Amounts will be paid to the City by the County Auditor and the County Treasurer in accordance with Ohio Revised Code Chapters 319, 321, 323, and 727, which, without limiting the

generality of the foregoing, contemplates that the County Auditor and County Treasurer will pay the Special Assessments and Delinquency Amounts to the City on or before June 1 of each year. Immediately upon receipt of any moneys received by the City as Special Assessments, but in any event not later than 21 calendar days after the receipt of such moneys and the corresponding final settlement from the County Auditor, the City shall deliver to the Investor all such moneys received by the City as Special Assessments and Delinquency Amounts by ACH or check as determined in the sole discretion of the City. The Investor shall provide the City with account and payment information in the form of **Exhibit I** on the date on which this Agreement becomes effective. The Investor may from time to time provide updated written account and payment information in the form of **Exhibit I** to the City for the payment of Special Assessments and Delinquency Amounts, but the City shall maintain its right to send the special assessments by ACH or check in its sole discretion. If at any time during the term of this Agreement the County Auditor agrees, on behalf of the City, to disburse the Special Assessments and Delinquency Amounts to the Investor pursuant to instructions or procedures agreed upon by the County Auditor and the City, then, upon each transfer of an installment of the Special Assessments and Delinquency Amounts from the County Auditor to the Investor, the City shall be deemed to have satisfied all of its obligations under this Agreement to transfer that installment of the Special Assessments and Delinquency Amounts to the Investor.

- (g) **Repayment of Project Advance.** The Investor shall credit, on the dates shown on the Repayment Schedule (which is attached to, and incorporated into, this Agreement as **Exhibit B**), Special Assessments in the amounts shown on the Repayment Schedule to the payment of accrued interest on the Project Advance and to the repayment of the portion of the principal of the Project Advance scheduled to be repaid on such date. The Investor, on the dates shown on the Repayment Schedule, further shall pay to the ESID, after the payment of accrued interest on the Project Advance, the repayment of the portion of principal of the Project Advance scheduled to be repaid on such date, and the payment of a \$[ ] semi-annual servicing fee to the Investor, a semi-annual fee of \$[ ] or such lesser amount as may be available from the Special Assessments on the applicable date after the payment of accrued interest on the Project Advance and the repayment of the portion of the principal of the Project Advance scheduled to be repaid on such date. The Parties acknowledge and agree that the County Auditor may calculate, charge, and collect a fee on each annual installment of the Special Assessments pursuant to Ohio Revised Code Section 727.36, which fee is in addition to the amount of the Special Assessments and other related interest, fees, and penalties, and that such fee shall be paid to the County Auditor with the Special Assessments, and that the County Auditor will retain such fee.

Section 2.3. **Obligations Unconditional; Place of Payments.** The City's obligation to transfer the Special Assessments and any Delinquency Amounts to the Investor under Section 2.2 of this Agreement shall be absolute and unconditional, and the City shall make such transfers without abatement, diminution, or deduction regardless of any cause or circumstance whatsoever, including, without limitation, any defense, set-off, recoupment, or counterclaim

which the City may have or assert against the Investor, the ESID, or the Owner; provided, however, that the City's obligation to transfer the Special Assessments and any Delinquency Amounts is limited to the Special Assessments and any Delinquency Amounts actually received by or on behalf of the City, and nothing in this Agreement shall be construed to obligate the City to transfer or pledge, and the City shall not transfer or pledge any special assessments not related to the ESID.

Section 2.4. Appropriation by the City; No Further Obligations. Upon the Parties' execution of this Agreement, all of the Special Assessments and Delinquency Amounts received or to be received by the City shall be deemed to have been appropriated to pay the City's obligation under this Agreement to pay to the Investor all Special Assessments and Delinquency Amounts received by the City. During the years during which this Agreement is in effect, the City shall take such further actions as may be necessary or desirable in order to appropriate the transfer of the Special Assessments and Delinquency Amounts actually received by the City in such amounts and at such times as will be sufficient to enable the City to satisfy its obligation under this Agreement to pay the City's obligation under this Agreement to pay to the Investor all Special Assessments and Delinquency Amounts received by the City; provided that the City shall not be responsible for the costs and expenses of any collection or enforcement actions, except to the extent of any Special Assessments and Delinquency Amounts actually received by the City; and provided further that nothing in this paragraph shall be construed as a waiver of the City's right to be indemnified pursuant to Section 6.4 of this Agreement or pursuant to the Special Assessment Agreement. The City has no obligation to use or apply to the payment of the Special Assessments and Delinquency Amounts any funds or revenues from any source other than the moneys received by the City as Special Assessments and Delinquency Amounts; provided, however, that nothing in this Agreement shall be deemed to prohibit the City from using, to the extent that it is authorized to do so, any other resources for the fulfillment of any of this Agreement's terms, conditions, or obligations.

Section 2.5. Security for Advanced Funds. To secure the transfer of the Special Assessments by the City to the Investor, and in accordance with the Special Assessment Act, the ESID hereby assigns, transfers, sets over, and shall pay all of its right, title, and interest in and to the Special Assessments related to the ESID actually received by or on behalf of the City to the Investor. The Owner and the City agree and consent to that assignment.

### ARTICLE III: REPRESENTATIONS, WARRANTIES, AND AGREEMENTS

Section 3.1. The City's Representations and Warranties. The City represents and warrants that:

- (a) It is a municipal corporation duly organized, and validly existing under the Constitution and applicable laws of the State.
- (b) It is not in violation of or in conflict with any provisions of the laws of the State or of the United States of America applicable to the City that would impair its ability to carry out its obligations contained in this Agreement.

- (c) It is legally empowered to execute, deliver and perform this Agreement and to enter into and carry out the transactions contemplated by this Agreement. To the City's knowledge, that execution, delivery and performance does not and will not violate or conflict with any provision of law applicable to the City and does not and will not conflict with or result in a default under any agreement or instrument to which the City is a party or by which it is bound.
- (d) It, by proper action, duly has authorized, executed, and delivered this Agreement, and the City has taken all steps necessary to establish this Agreement and the City's covenants and agreements within this Agreement, as valid and binding obligations of the City, enforceable in accordance with their terms.
- (e) There is no litigation pending, or to its knowledge threatened, against or by the City in which an unfavorable ruling or decision would materially adversely affect the City's ability to carry out its obligations under this Agreement.
- (f) The assignment contained in Section 2.2(e) is a valid and binding obligation of the City with respect to the Special Assessments received by the City under this Agreement.

Section 3.2. The ESID's Representations and Warranties. The ESID represents and warrants that:

- (a) It is a nonprofit corporation and special improvement district, duly organized, and validly existing under the Constitution and applicable laws of the State.
- (b) It is not in violation of or in conflict with any provisions of the laws of the State or of the United States of America applicable to the ESID that would impair its ability to carry out its obligations contained in this Agreement.
- (c) It is legally empowered to execute, deliver and perform this Agreement and to enter into and carry out the transactions contemplated by this Agreement. To the ESID's knowledge, that execution, delivery and performance does not and will not violate or conflict with any provision of law applicable to the ESID and does not and will not conflict with or result in a default under any agreement or instrument to which the ESID is a party or by which it is bound.
- (d) It, by proper action, duly has authorized, executed, and delivered this Agreement, and the ESID has taken all steps necessary to establish this Agreement and the ESID's covenants and agreements within this Agreement as valid and binding obligations of the ESID, enforceable in accordance with their terms.
- (e) There is no litigation pending, or to its knowledge threatened, against or by the ESID in which an unfavorable ruling or decision would materially adversely affect the ESID's ability to carry out its obligations under this Agreement.

- (f) The assignment contained in Section 2.5 is a valid and binding obligation of the ESID with respect to the ESID's right, title and interest in the Special Assessments under this Agreement.

Section 3.3. The Owner's Representations and Warranties. The Owner represents and warrants that:

- (a) It is a limited liability company duly organized, validly existing and in full force and effect under the laws of the State of Ohio. It has all requisite power to conduct its business as presently conducted and to own, or hold under lease, its assets and properties, and, is duly qualified to do business in all other jurisdictions in which it is required to be qualified, except where failure to be so qualified does not have a material adverse effect on it, and will remain so qualified and in full force and effect during the period during which Special Assessments shall be assessed, due, and payable.
- (b) It, by proper action, duly has authorized, executed, and delivered this Agreement, and it has taken all steps necessary to establish this Agreement and its covenants and agreements within this Agreement as valid and binding obligations, enforceable in accordance with their terms
- (c) There are no actions, suits or proceedings pending or, to its knowledge, threatened against or affecting it, the Property, or the Project that, if adversely determined, would individually or in the aggregate materially impair its ability to perform any of its obligations under this Agreement, or materially adversely affect its financial condition (an "Action"), and during the term of this Agreement, the Owner shall promptly notify the Investor of any Action commenced or to its knowledge threatened against it.
- (d) It is not in default under this Agreement, and no condition, the continuance in existence of which would constitute a default under this Agreement exists. It is not in default in the payment of any Special Assessments or under any agreement or instrument related to the Special Assessments which has not been waived or allowed.
- (e) Except for any financing of the Property and the lien related thereto that Owner has previously disclosed in writing, it has made no contract or arrangement of any kind, other than this Agreement, which has given rise to, or the performance of which by the other party thereto would give rise to, a lien or claim of lien on its Project, except inchoate statutory liens in favor of suppliers, contractors, architects, subcontractors, laborers or materialmen performing work or services or supplying materials in connection with the acquiring, installing, equipping and improving of its Project.
- (f) No representation or warranty made by it contained in this Agreement, and no statement contained in any certificate, schedule, list, financial statement or other instrument furnished to the Investor or the ESID by it or on its behalf contained,

as of the date thereof, any untrue statement of a material fact, or omits to state a material fact necessary to make the statements contained herein or therein not misleading.

- (g) Since the date of the most recent financial statements of the Owner provided to the Investor, there has been no material adverse change in the financial condition of the Owner, nor has the Owner mortgaged, pledged or granted a security interest in or encumbered the Property since such date, except as otherwise disclosed to the Investor in writing, and the financial statements which have been delivered to the Investor prior to the date of this Agreement are true, correct, and current in all material respects and fairly represent the respective financial conditions of the subjects of the financial statements as of the respective dates of the financial statements.
- (h) The Owner has good and marketable title to its Property, subject only to existing liens, pledges, encumbrances, charges or other restrictions of record previously disclosed by the Owner to the Investor in writing, liens for taxes not yet due and payable, and minor liens of an immaterial nature.
- (i) The Project complies in all material respects with all applicable zoning, planning, building, environmental and other regulations of each Governmental Authority having jurisdiction of the Project, and all necessary permits, licenses, consents and permissions necessary for the Project have been or will be obtained.
- (j) The plans and specifications for the Project are satisfactory to the Owner, have been reviewed and approved by the general contractor for the Project, the tenants under any leases which require approval of the plans and specifications, the purchasers under any sales contracts which require approval of the plans and specifications, any architects for the Project, and, to the extent required by applicable law or any effective restrictive covenant, by all Governmental Authorities and the beneficiaries of any such covenants; all construction of the Project, if any, already performed on the Property has been performed on the Property in accordance with such approved plans and specifications and the restrictive covenants applicable to the plans and specifications; there are no structural defects in the Project or violations of any requirement of any Governmental Authorities with respect to the Project; the planned use of the Project complies with applicable zoning ordinances, regulations, and restrictive covenants affecting the Property as well as all environmental, ecological, landmark and other applicable laws and regulations; and all requirements for such use have been satisfied.
- (k) The Owner has the Required Insurance Coverage and will maintain the Required Insurance Coverage at all times during the term of this Agreement, while any principal of or interest on the Project Advance remains outstanding, and while any Special Assessments remain to be paid. Any return of insurance premium or dividends based upon the Required Insurance Coverage shall be due and payable solely to the Owner or its Lender pursuant to any agreements between the Owner

and its Lender, unless such premium shall have been paid by the Investor, in accordance with the distribution priority specified in Section 4.3.

- (l) Each Disbursement Request Form presented to the Investor, and the receipt of the funds requested by the Disbursement Request Form, shall constitute an affirmation that the representations and warranties contained in this Agreement remain true and correct as of the date of the Disbursement Request Form and the receipt of the funds requested by the Disbursement Request Form.
- (m) Each of the Property and the Project are, and at all times during the term of this Agreement, while any principal of or interest on the Project Advance remain outstanding, and while any Special Assessments remain to be paid, used solely for the commercial purposes disclosed by the Owner to the Investor in writing.
- (n) The Project and the plans and specifications for the Project have been developed pursuant to an energy audit prepared by the Investor, which energy audit demonstrates that the Project is expected to generate \$56,408.88 in average annual energy savings.
- (o) Each of the components of the Project is a qualified "special energy improvement project" pursuant to the definition of that term in Ohio Revised Code Section 1710.01(I).
- (p) At all times during the term of this Agreement, while any principal of or interest on the Project Advance remain outstanding, and while any Special Assessments remain to be paid, the Owner shall comply in all respects with the Special Assessment Act, and shall take any and all action necessary to remain in compliance with the Special Assessment Act.

Section 3.4. The Owner's Additional Agreements. The Owner agrees that:

- (a) It shall not transfer or convey any right, title, or interest, in or to the Property and the Project, except after giving prompt notice of any such transfer or conveyance to the Investor; provided, however, that the foregoing restrictions shall not apply to the grant or conveyance of any leasehold interests, mortgage interest, or lien interest, except as may be otherwise provided in this Agreement. Before or simultaneous with any such transfer or conveyance, the Owner shall (i) execute, cause the transferee or purchaser to execute, and deliver to the Investor, the City, and the ESID a fully executed "Assignment and Assumption of Energy Project Cooperative Agreement" in the form attached to, and incorporated into, this Agreement as **Exhibit H**; and (ii) execute, cause the transferee or purchaser to execute, and deliver to the Investor, an assignment of all construction contracts related to the Project. The Parties acknowledge and agree that the Assignment and Assumption of Energy Project Cooperative Agreement includes the assignment and assumption of the Special Assessment Agreement and the Owner Consent.

- (b) It shall pay when due all taxes, assessments, service payments in lieu of taxes, levies, claims and charges of any kind whatsoever that may at any time be lawfully assessed or levied against or with respect to the Property, all utility and other charges incurred in the operation, maintenance, use, occupancy and upkeep of the Property and all assessments and charges lawfully made by any governmental body for public improvements that may be secured by a lien on any portion of the Property. The Owner shall furnish the Investor, upon reasonable request, with proof of payment of any taxes, governmental charges, utility charges, insurance premiums or other charges required to be paid by the Owner under this Agreement. The Parties acknowledge and agree that the foregoing obligation is in addition to the Owner's obligation to pay the Special Assessment.
- (c) It shall not, without the prior written consent of the Investor, cause or agree to the imposition of any special assessments, other than the Special Assessments, on the Property for the purpose of paying the costs of "special energy improvement projects," as that term is defined in Ohio Revised Code Section 1710.01(I), as amended and in effect at the time.
- (d) It shall promptly pay and discharge all claims for labor performed and material and services furnished in connection with the acquisition, installation, equipment, and improvement of the Project.
- (e) Once annually until the Completion Date, the chief financial officer of the Owner shall provide the Investor with a certificate setting forth all sources and uses of funds with respect to the Project.
- (f) It promptly shall notify the Investor of any material damage or destruction to the Project.
- (g) Upon the reasonable request of the Investor, it shall take any actions and execute any further certificates, instruments, agreements, or documents as shall be reasonably necessary in connection with the performance of this Agreement and with the transactions, obligations, and undertakings contained in this Agreement.
- (h) It shall not cause the Property to be subdivided, platted, or otherwise separated into any additional parcels in the records of the County Auditor.
- (i) It does not and will not engage in operations that involve the generation, manufacture, refining, transportation, treatment, storage or handling of hazardous materials or hazardous wastes, as defined in applicable state law, or any other federal, state or local environmental laws or regulations, and neither the Property nor any other of its premises has been so used previously, in each case, except as previously disclosed in writing to the Investor. There are no underground storage tanks located on the Property. There is no past or present non-compliance with environmental laws, or with permits issued pursuant thereto, in connection with the Property, which has not been fully remediated in accordance with environmental laws. There is no environmental remediation required (or



anticipated to be required) with respect to the Property. The Owner does not know of, and has not received, any written or oral notice or other communication from any person (including but not limited to a governmental entity) relating to hazardous substances or remediation of hazardous substances, of possible liability of any person pursuant to any environmental law, other environmental conditions in connection with the Property, or any actual or potential administrative or judicial proceedings in connection with the foregoing.

#### ARTICLE IV: PROJECT ADVANCE; CONSTRUCTION OF PROJECT; REPAYMENT

Section 4.1. Project Advance. The Investor has made available to the Owner the Project Advance in the amount of \$3,011,597.00, of which \$2,800,000.00 will be net funded into the Project Account (as defined below) for disbursement pursuant to Section 4.2, closing costs in the amount of \$84,500.00 will be disbursed by the Investor in accordance with Section 4.2 and Exhibit E, and capitalized interest in the amount of \$100,097.00 will be retained for the account of the Investor for further payment to itself and the EISD in accordance with this Agreement. The Disbursing Agent shall hold the Project Advance in a segregated account established in the custody of the Investor, which account shall be referred to as the "Project Account." Subject to the terms and conditions of this Agreement, the Disbursing Agent, upon the direction of the Owner, shall cause the Disbursing Agent to disburse amounts on deposit in the Project Account to the Owner or to such parties as may be named by the Owner in order to pay the costs of the Project.

If the Project Advance net funded to the Owner is insufficient to pay the costs of the Project pursuant to this Agreement, the Owner, nevertheless, shall complete the acquisition, installation, equipment, and improvement of its Project, and the Owner shall pay all such additional costs of its Project from its own funds. The Owner shall not be entitled to reimbursement for any such additional costs of its Project, nor shall it be entitled to any abatement, diminution, or postponement of the Special Assessments.

Section 4.2. Disbursements. In order to cause disbursement of amounts on deposit in the Project Account to pay or reimburse the costs of the Project, the Owner shall submit Disbursement Request Forms (a form of which is attached to this Agreement as Exhibit C) to the Investor, which Disbursement Request Forms each shall, in part, set forth the payments or reimbursements requested, and shall be accompanied by invoices or other appropriate documentation supporting the payments or reimbursements requested. In addition, the following shall occur:

- (a) With each Disbursement Request Form:
  - (i) The Owner shall deliver to the Investor proof that each project milestone has occurred;
  - (ii) The Owner shall deliver to the Investor copies of all related receipts and invoices;
  - (iii) The Owner shall deliver to the Investor signed lien waivers in the form attached to the Disbursement Request Form as Schedule 2;

- (iv) The Owner shall deliver to the Disbursing Agent, on behalf of the Investor, as necessary, bank information for wiring the amounts requested for disbursement;
  - (v) The Investor shall have received copies of all other disbursement requests for disbursements of other sources of funds, including from the loan from the Owner's Lender, that have been submitted on or prior to the date on which the related Disbursement Request is submitted, and all such disbursement requests shall have been validly approved in accordance with the Lender Loan Documents; and
  - (vi) All of the conditions to disbursement under the Disbursing Agreement shall have been satisfied.
- (b) With the first Disbursement Request Form submitted, in addition to the documents required under Section 4.2(a):
- (i) The Owner shall deliver to the Investor copies of all construction permits required for the construction of the Project;
  - (ii) The Owner shall deliver to the Investor copies of all agreements with all subcontractors performing work or furnishing materials for the Project;
  - (iii) The Owner shall deliver to the Investor a construction schedule completed by the general contractor for the Project, which includes an anticipated date of completion of the Project; and
  - (iv) The Owner shall deliver to the Investor copies of all current policies of the Required Insurance Coverage;
  - (v) The construction plans and specifications shall have been approved in all respects by the Investor in its sole discretion;
  - (vi) The budget shall have been approved by the Investor in its sole discretion;
  - (vii) The Owner shall deliver to the Investor the written consent of its existing mortgage lender to the levying, assessment, and collection of the Special Assessments, in the form attached to this Agreement as **Exhibit G**;
  - (viii) The Owner shall provide to the Investor evidence acceptable to the Investor, in its sole discretion, that the City Council and the ESID have approved the Project;
  - (ix) The Investor shall receive the executed Special Assessment Agreement and Owner Consent and evidence that the same has been recorded in the records of the Recorder of Greene County, Ohio with respect to the Property;
  - (x) The Owner and the ESID shall provide to the Investor original executed copies of this Agreement and any related certificates;
  - (xi) The Owner shall provide to the Investor a list of authorized representatives on whose instructions and directions the Investor may rely until such time as an updated list has been provided, as set forward in **Exhibit I**, attached hereto.
- (c) With the final Disbursement Request Form, in addition to the documents required under Section 4.2(a):

- (i) The Owner shall deliver to the Investor the final lien waiver and release;
- (ii) The Owner shall deliver to the Investor the executed certificate in the form attached as **Exhibit D** to this Agreement; and
- (iii) The Owner shall deliver to the Investor copies of all completion inspections and closed permits with respect to the Project.

Upon its receipt of each completed Disbursement Request Form, the Investor shall approve all or a portion of the payment or reimbursements requested to be disbursed from the Project Account. To the extent the Investor approves the payment or reimbursements requested to be disbursed from the Project Account, the Investor shall cause the Disbursing Agent to pay the Owner or such other parties as are indicated on the Disbursement Request Form the amounts described on such Disbursement Request Form which have been approved by the Investor.

Additionally, on the date this Agreement becomes effective, the Investor shall cause the Disbursing Agent to disburse to the ESID for closing costs related to the financing described in this Agreement in an amount not to exceed \$84,500.00, as detailed in **Exhibit E** to this Agreement. Without limiting the generality of the foregoing, disbursements made pursuant to this paragraph may be for fees to the Investor, fees to the ESID, legal fees, fees to the City, and other closing costs or contingencies.

If at any time an Event of Default has occurred and is continuing under this Agreement, the Investor may withhold approval of any requests for disbursement until the Event of Default is cured and its effects are removed.

Notwithstanding the foregoing, upon the Investor's receipt from the Owner's Lender of notice of a default under the Lender Loan Documents beyond the expiration of any applicable notice and cure period, the Owner shall forfeit all rights under this Agreement to the Lender (including, without limitation, any rights to disbursements), and the Lender shall be entitled to all of the rights of the Owner under this Agreement. So long as the Owner's Lender has cured (or caused the cure of) any Event of Default under this Agreement, or, if any Event of Default is not curable by the Lender, the Lender has agreed to complete construction of the Project notwithstanding the Event of Default under this Agreement, then disbursements shall be made available to the Lender in accordance with this Agreement and the Disbursing Agreement. In such event, the Owner hereby irrevocably makes, constitutes, and appoints the Owner's Lender as the Owner's true and lawful attorney and agent-in-fact to execute all documents and other agreements and instruments and do such other acts and things as may be necessary to preserve and perfect its interests and rights under this Agreement. The Owner acknowledges and agrees that its appointment of the Lender as its attorney and agent-in-fact for the purposes specified in this Section is an appointment coupled with an interest and shall be irrevocable until all of the obligations under the Lender Loan Documents are satisfied. Nothing contained in this Section shall obligate the Lender to perform any obligations on behalf of the Owner (including, without limitation, the obligation to complete the Project).

Section 4.3. **Casualties and Takings.** The Owner shall promptly notify the Investor if the Project is damaged or destroyed by fire, casualty, injury or any other cause (each such occurrence, a "Casualty"). Upon the occurrence of such Casualty, the Owner's Lender, if any,

may elect, in its sole discretion and judgment, to restore the Property and the Project or to terminate the construction of the Project, and in either case, to direct the application of the insurance proceeds pursuant to the terms of Owner's Lender's agreement with the Owner, provided that if the insurance proceeds are not used to restore the Property and the Project, insurance proceeds will be distributed to the Owner's Lender and to the Investor in accordance with their insured interests, and any excess proceeds will be paid to the Owner.

Upon the occurrence of a Casualty, if no Person is a Lender at the time of such Casualty, the insurance proceeds shall be applied to pay the costs of the restoration of the Project or to the repayment of the outstanding balance of the Special Assessments, and in which case the Investor shall remain obligated to cause the Disbursing Agent to make disbursements of up to the total amount of the Project Advance in accordance with this Agreement.

In the event restoration of the Project or the Property is pursued, the Owner shall immediately proceed with the restoration of the Project in accordance with the plans and specifications. If, in the Investor's reasonable judgment, said insurance proceeds are insufficient to complete the restoration, the Owner shall deposit with the Disbursing Agent such amounts as are necessary, in the Investor's reasonable judgment, to complete the restoration in accordance with the plans and specifications.

In the event any part of the Property or the Project shall be taken for public purposes by condemnation as a result of any action or proceeding in eminent domain, or shall be transferred in lieu of condemnation to any authority entitled to exercise the power of eminent domain (a "Taking"), the Owner's Lender, if any, may elect, in its sole discretion and judgment, not to restore the Property or the Project or to restore the Property or the Project, and in either case, to direct the application of the proceeds of the Taking pursuant to the terms of its agreements with the Owner, provided that if the Takings proceeds are not used to restore the Property and the Project, Takings proceeds will be distributed to Owner's and to the Investor in accordance with their insured interests, and any excess Takings proceeds will be paid to the Owner. If the Lender determines not to restore the Property or the Project and release funds related thereto to the Owner, the Investor's obligation to cause the Disbursing Agent to make disbursements under this Agreement shall be terminated. If the Lender determines to restore the Property and the Project, the Owner shall immediately proceed with the restoration of the Project in accordance with the plans and specifications. If, in the Investor's reasonable judgment, the Taking proceeds available to the Owner and the Investor are insufficient to complete the restoration, the Owner shall deposit with the Disbursing Agent such amounts as are necessary, in the Investor's reasonable judgment, to complete the restoration in accordance with the plans and specifications.

In the event that no Person is a Lender at the time of such Taking, the Investor's obligation to cause the Disbursing Agent to make disbursements under this Agreement shall be terminated unless the Property and the Project can be replaced and restored in a manner which will enable the Project to be functionally and economically utilized and occupied as originally intended. If the Property and the Project can be so restored, the Owner shall immediately proceed with the restoration of the Project in accordance with the plans and specifications, and the Investor shall cause the Disbursing Agent to release the funds for such purpose. If, in the Investor's reasonable judgment, the Taking proceeds available to the Owner and the Investor are

insufficient to complete the restoration, the Owner shall deposit with the Disbursing Agent such amounts as are necessary, in the Investor's reasonable judgment, to complete the restoration in accordance with the plans and specifications.

Section 4.4. Eligible Costs. The costs of the Project which are eligible for payment or reimbursement pursuant to this Agreement include the following:

- (a) costs incurred directly or indirectly for or in connection with the acquisition, installation, equipment, and improvement of the Project, including without limitation, costs incurred in respect of the Project for preliminary planning and studies; architectural, legal, engineering, surveying, accounting, consulting, supervisory and other services; labor, services and materials; and recording of documents and title work;
- (b) financial, legal, recording, title, accounting, and printing and engraving fees, charges and expenses, and all other fees, charges and expenses incurred in connection with the financing described in this Agreement;
- (c) premiums attributable to any surety and payment and performance bonds and insurance required to be taken out and maintained until the date on which each Project is final and complete;
- (d) taxes, assessments and other governmental charges in respect of the Project that may become due and payable until the date on which each Project is final and complete;
- (e) costs, including, without limitation, attorney's fees, incurred directly or indirectly in seeking to enforce any remedy against any contractor or subcontractor in respect of any actual or claimed default under any contract relating to the Project; and
- (f) any other incidental or necessary costs, expenses, fees and charges properly chargeable to the cost of the acquisition, installation, equipment, and improvement of the Project.

Section 4.5. Completion of Project; Inspection. The Owner (a) in accordance with the approved plans and specifications for the Project, which plans and specifications shall not be materially revised without the prior written approval of the Investor, which approval shall not be unreasonably withheld, shall acquire, install, equip, and improve its Project with Project Advance with all commercially reasonable dispatch, (b) subject to its right to contest any disputed work, shall pay when due all fees, costs and expenses incurred or payable by the Owner in connection with that acquisition, installation, equipment, and improvement from funds made available therefor in accordance with this Agreement or otherwise, and (c) shall ask, demand, sue for, levy, recover and receive all those sums of money, debts and other demands whatsoever which may be due, owing and payable to the Owner under the terms of any contract, order, receipt, writing or instruction in connection with the acquisition, installation, equipment, and improvement of the Project, and shall utilize commercially reasonable efforts to enforce the

provisions of any contract, agreement, obligation, bond or other performance security with respect thereto. It is understood that the Project is to be owned by the Owner and any contracts made by the Owner with respect to the Project or any work to be done by the Owner on or with respect to the Project are made or done by the Owner on its own behalf and not as agent or contractor for the ESID.

During the period of acquisition, installation, equipment, and improvement of the Project, the ESID and the Investor, and their respective agents, subject to reasonable security and safety regulations, and upon reasonable prior notice, shall have the right, during normal business hours, to inspect the Project. The ESID and the Investor and their respective agents shall utilize commercially reasonable efforts to minimize interference with the tenants of the Property during any such inspection.

The Investor reserves the right to deny the request for a Project Advance pursuant to Article IV of this Agreement if such inspection reveals that construction is not proceeding with reasonable dispatch. If, in the Investor's opinion, after 30 days' written notice to the Owner, the construction is not proceeding with reasonable dispatch, the Investor may (i) request that the Owner remove and replace the general contractor with a general contractor acceptable to the Investor, the failure of which by the Owner shall be a default under this Agreement, (ii) utilize funds to continue construction of the Project and such funds shall be considered Project Advances, or (iii) deny any Project Advance until such time as the construction resumes proceeding with reasonable dispatch.

The Owner shall notify the ESID, the City, and the Investor of the Completion Date by a certificate in the form attached as **Exhibit D** to this Agreement, signed by the Owner stating: (a) the date on which the acquisition, installation, equipment, and improvement of the Project was substantially completed by the general contractor for the Project in accordance with the construction contract, and the Owner has no unresolved complaints regarding the work; (b) that the Project has been completed in all material respects in accordance with the plans and specifications, permits, and budget for the Project approved by the Investor; (c) that the Owner has complied, and will continue to comply with all applicable statutes, regulations, and resolutions or ordinances in connection with the Property and the construction of the Project; (d) that the Owner holds fee ownership of the Property; (e) that the general contractor for the project has not offered the Owner any payment, refund, or any commission in return for completing Project; and (f) that all funds provided to the Owner by the Investor for the Project have been used in accordance with this Agreement. The certificate shall be delivered as promptly as practicable after the Completion Date.

Section 4.6. Repayment. The Parties acknowledge that pursuant to this Agreement, the Project Advance is expected to be repaid by the Special Assessments. The Parties agree that the Special Assessments have been levied and certified to the County Auditor in the amounts necessary to amortize the Project Advance, together with interest at the annual rate of 6.48%, a \$[ ] semi-annual servicing fee to the Investor, and a \$[ ] semi-annual administrative fee to the ESID over 50 semi-annual payments to be collected beginning approximately on January 31, 2020 and continuing through approximately July 20, 2045. The Parties further acknowledge that in addition to the amount of the Special Assessments and other related interest, fees, and

penalties, the County Auditor may charge and collect a County Auditor collection fee on each annual installment of the Special Assessments in an amount to be calculated, charged, and collected by the County Auditor pursuant to Ohio Revised Code Section 727.36, which fee is in addition to the amount of the Special Assessments and other related interest, fees, and penalties. Interest shall accrue on the entire amount of the Project Advance from the date of this Agreement; provided, however, that a portion of the Project Advance may be used to pay interest accruing and due and payable on the Project Advance prior to the date on which the first installment of the Special Assessments is paid to the Investor by the City. The Owner agrees to pay, as and when due, all Special Assessments with respect to its Property. The Parties acknowledge and agree that, pursuant to the laws of the State, the Special Assessments to be collected by the County Treasurer which as of the relevant date are not yet due and payable never shall be accelerated, and the lien of the Special Assessments never shall exceed the amount of Special Assessments which, as of the relevant date, are due and payable but remain unpaid.

Section 4.7. Prepayment. At any time after the second semi-annual payment of the Special Assessment occurring in 2029 has been made, the Owner may prepay any portion of the principal of the Project Advance to the Investor by paying, in immediately available funds, 100% of the principal amount of the Project Advance to be prepaid, together with all accrued and unpaid interest on the Project Advance to the date of prepayment.

Immediately upon any prepayment pursuant to this Section 4.7, the Investor shall notify the City of the prepayment, and the Owner, the Investor, and the City shall cooperate to reduce the amount of Special Assessments to be collected by the County Auditor pursuant to Section 2.2(d) of this Agreement.

Section 4.8. Payment of Fees and Expenses. If an Event of Default on the part of the Owner should occur under this Agreement such that the ESID, the Investor, or the City should incur expenses, including attorneys' fees, in connection with the enforcement of this Agreement or the collection of sums due under this Agreement, the Owner shall reimburse the ESID, the Investor, and the City, as applicable, for any reasonable out-of-pocket expenses so incurred upon demand. If any such expenses are not so reimbursed, the amount of such expenses, together with interest on such amount from the date of demand for payment at an annual rate equal to the maximum rate allowable by law, shall constitute indebtedness under this Agreement, and the ESID, the Investor, and the City, as applicable, shall be entitled to seek the recovery of those expenses in such action except as limited by law or by judicial order or decision entered in such proceedings.

Section 4.9. Further Assurances. Upon the request of the Investor, the Owner shall take any actions and execute any further documents as the Investor deems necessary or appropriate to carry out the purposes of this Agreement.

## ARTICLE V: EVENTS OF DEFAULT AND REMEDIES

Section 5.1. Events of Default. If any of the following shall occur, such occurrence shall be an "Event of Default" under this Agreement:

- (a) The Owner shall fail to pay an installment of the Special Assessments when due, after taking into account all applicable extensions;
- (b) The City shall fail to transfer, or cause the transfer of, any of the Special Assessments to the Investor within the time specified in this Agreement;
- (c) Any Party is in material breach of its representations or warranties under this Agreement; provided, however, that upon the material breach of a Party's representations or warranties under this Agreement, such Party shall have the right to cure such breach within five days of the receipt of notice, and, if so cured, such breach shall not constitute an Event of Default;
- (d) The ESID, the Owner, or the City, shall fail to observe and perform any other agreement, term, or condition contained in this Agreement, and the continuation of such failure for a period of 30 days after written notice of such failure shall have been given to the ESID, the Owner, or the City, as applicable, by any other Party to this Agreement, or for such longer period to which the notifying Party may agree in writing; provided, however, that if the failure is other than the payment of money, and is of such nature that it can be corrected but not within the applicable period, that failure shall not constitute an Event of Default so long as the ESID, an Owner, or the City, as applicable, institutes curative action within the applicable period and diligently pursues that action to completion;
- (e) The Owner abandons its Property or its Project;
- (f) The Owner commits waste upon its Property or its Project;
- (g) The Owner becomes bankrupt or insolvent or files or has filed against it (and such action is not stayed or dismissed within 90 days) a petition in bankruptcy or for reorganization or arrangement or other relief under the bankruptcy laws or any similar state law or makes a general assignment for the benefit of creditors; or
- (h) Any workmanship or materials constituting a portion of the Project or incorporated into the Project shall be materially defective and shall not be corrected within 30 days after notice.

The declaration of an Event of Default above, and the exercise of remedies upon any such declaration, shall be subject to any applicable limitations of federal bankruptcy law affecting or precluding that declaration or exercise during the pendency of or immediately following any bankruptcy, liquidation or reorganization proceedings.

Promptly upon any non-defaulting Party becoming aware that an Event of Default has occurred, such Party shall deliver notice of such Event of Default to each other Party under this Agreement in accordance with the notice procedures described in Section 6.5 of this Agreement.

Section 5.2. Remedies on Default. Whenever an Event of Default shall have happened and be subsisting, any one or more of the following remedial steps may be taken:



- (a) Upon an Event of Default described in Section 5.1(a) only, the Investor shall become entitled to receive any Delinquency Amounts actually received by the City.
- (b) The ESID, the Investor, and the City, together or separately, may pursue all remedies now or later existing at law or in equity to collect all amounts due and to become due under this Agreement or to enforce the performance and observance of any other obligation or agreement of any of the Parties, as applicable, under this Agreement, including enforcement under Ohio Revised Code Chapter 2731 of duties resulting from an office, trust, or station upon the ESID or the City, provided that, Parties may only pursue such remedies against the Party responsible for the particular Event of Default in question; provided, however, that the ESID, the Investor, and the City may not take any other action or exercise any remedy against the Property, the Project, or the Owner except to collect or remedy any outstanding damages or liability which shall have arisen due to the occurrence of an Event of Default.
- (c) Any Party may pursue any other remedy which it may have, whether at law, in equity, or otherwise, provided that, Parties may only pursue such remedies against the Party responsible for the particular Event of Default in question; provided, however, that the ESID, the Investor, and the City may not take any other action or exercise any remedy against the Property, the Project, or the Owner except to collect or remedy any outstanding damages or liability which shall have arisen due to the occurrence of an Event of Default.

Notwithstanding the foregoing, each of the ESID and the City shall not be obligated to take any step which in its opinion will or might cause it to expend time or money or otherwise incur liability unless and until a satisfactory indemnity bond has been furnished to it at no cost or expense.

Section 5.3. Foreclosure. Pursuant to Section 2.1 of the Special Assessment Agreement by and among the County Treasurer, the City, the ESID, and the Owner and dated as of the date of this Agreement (the "Special Assessment Agreement"), the County Treasurer has agreed not to confirm the sale of the Property for an amount less than 100% of the amount of the Special Assessments and other general real estate taxes, payments in lieu of taxes, and assessments then due and owing with respect to the Property, as shall be certified by the ESID to the County Treasurer pursuant to the records of the County Treasurer without the consent of the ESID and the Investor. The ESID hereby agrees that in the event it is asked to provide its consent in accordance with Section 2.1, it will notify the Investor of such request, and it will not provide its consent pursuant to Section 2.1 of the Special Assessment Agreement without the Investor's prior written direction.

Section 5.4. No Remedy Exclusive. No remedy conferred upon or reserved to the Parties by this Agreement is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement, or now or later existing at law, in equity or by statute; provided, however, that the ESID, the Investor, and the City may not take any other action or

exercise any remedy against the Property, the Project, or the Owner except to collect or remedy any outstanding damages or liability which shall have arisen due to the occurrence of an Event of Default. No delay or omission to exercise any right or power accruing upon any default shall impair that right or power nor shall be construed to be a waiver, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Parties to exercise any remedy reserved to it in this Article, it shall not be necessary to give any notice, other than any notice required by law or for which express provision is made in this Agreement.

Section 5.5. No Waiver. No failure by a Party to insist upon the strict performance by the other Parties of any provision of this Agreement shall constitute a waiver of such Party's right to strict performance; and no express waiver shall be deemed to apply to any other existing or subsequent right to remedy the failure by the Parties to observe or comply with any provision of this Agreement.

Section 5.6. Notice of Default. Any Party to this Agreement shall notify every other Party to this Agreement immediately if it becomes aware of the occurrence of any Event of Default or of any fact, condition or event which, with the giving of notice or passage of time or both, would become an Event of Default.

#### ARTICLE VI: MISCELLANEOUS

Section 6.1. Owner Waivers. The Owner acknowledges that the process for the imposition of special assessments provides the owner of property subject to such special assessments with certain rights, including rights to: receive notices of proceedings; object to the imposition of the special assessments; claim damages; participate in hearings; take appeals from proceedings imposing special assessments; participate in and prosecute court proceedings, as well as other rights under law, including but not limited to those provided for or specified in the United States Constitution, the Ohio Constitution, Ohio Revised Code Chapter 727 and the resolutions or ordinances in effect in the City (collectively, "Assessment Rights"). The Owner irrevocably waives all Assessment Rights as to its Project and consents to the imposition of the Special Assessments as to its Project immediately or at such time as the ESID determines to be appropriate, and the Owner expressly requests the entities involved with the special assessment process to promptly proceed with the imposition of the Special Assessments upon its Property as to its Project. The Owner further waives in connection with the Project: any and all questions as to the constitutionality of the laws under which the Project will be constructed and the Special Assessments imposed upon the Property; the jurisdiction of the Council of the City acting thereunder; and the right to file a claim for damages as provided in Ohio Revised Code Section 727.18 and any similar provision of the resolutions or ordinances in effect within the City.

Section 6.2. Term of Agreement. This Agreement shall be and remain in full force and effect from the date of execution and delivery until the payment in full of the entire aggregate amount of the Special Assessments shall have been made to the Investor, or such time as the Parties shall agree in writing to terminate this Agreement. Any attempted termination of this Agreement prior to the payment in full of the entire aggregate amount of the Special Assessments which is not in writing and signed by each of the Parties to this Agreement shall be null and void.

Section 6.3. Litigation Notice. Each Party shall give all other Parties prompt notice of any action, suit, or proceeding by or against the notifying Party, at law or in equity, or before any governmental instrumentality or agency, of which the notifying Party has notice and which, if adversely determined would impair materially the right or ability of the Parties to perform their obligations under this Agreement. The notifying Party's prompt notice shall be accompanied by its written statement setting forth the details of the action, suit, or proceeding and any responsive actions with respect to the action, suit, or proceeding taken or proposed to be taken by the Party.

Section 6.4. Indemnification. The Owner shall indemnify and hold harmless the ESID, the Investor, and the City (including any member, officer, director, or employee thereof) (collectively, the "Indemnified Parties") against any and all liabilities, obligations, claims, damages, penalties, causes of action, costs and expenses (including, without limitation, reasonable attorneys' fees and expenses) imposed upon, incurred by or asserted against an Indemnified Party arising or resulting from (i) Owner's financing, acquisition, construction, installation, operation, use or maintenance of the Project, (ii) any act, failure to act or misrepresentation solely by the Owner in connection with, or in the performance of any obligation on the Owner's part to be performed under this Agreement or related to the Special Assessments resulting in material actual damages, or (iii) (a) a past, present or future violation or alleged violation of any environmental laws in connection with the Property by any person or other source, whether related or unrelated to the Owner, (b) any presence of any hazardous, toxic or harmful substances, materials, wastes, pollutants or contaminants defined as such in or regulated under any environmental law ("Materials of Environmental Concern") in, on, within, above, under, near, affecting or emanating from the Property, (c) the failure to timely perform any investigation, inspection, site monitoring, containment, clean-up, removal, response, corrective action, mitigation, restoration or other remedial work of any kind or nature because of, or in connection with, the current or future presence, suspected presence, Release (as defined below) or threatened Release in or about the air, soil, ground water, surface water or soil vapor at, on, about, under or within all or any portion of the Property of any Materials of Environmental Concern, including any action to comply with any applicable environmental laws or directives of any governmental authority with regard to any environmental laws, (d) any past, present or future activity by any person or other source, whether related or unrelated to the Owner in connection with any actual, proposed or threatened use, treatment, storage, holding, existence, disposition or other release, generation, production, manufacturing, processing, refining, control, management, abatement, removal, handling, transfer or transportation to or from the Property of any Materials of Environmental Concern at any time located in, under, on, above or affecting the Property, (e) any past, present or future actual generation, treatment, use, storage, transportation, manufacture, refinement, handling, production, removal, remediation, disposal, presence or migration of Materials of Environmental Concern on, about, under or within all or any portion of the Property (a "Release") (whether intentional or unintentional, direct or indirect, foreseeable or unforeseeable) to, from, on, within, in, under, near or affecting the Property by any person or other source, whether related or unrelated to the Owner, (f) the imposition, recording or filing or the threatened imposition, recording or filing of any lien on the Property with regard to, or as a result of, any Materials of Environmental Concern or pursuant to any environmental law, or (g) any misrepresentation or failure to perform any obligations related to environmental matters in any way pursuant to any documents related to the Special Assessments.

In the event any action or proceeding is brought against any Indemnified Party by reason of any such claim, such Indemnified Party will promptly give written notice thereof to the Owner. The Owner shall be entitled to participate at its own expense in the defense or, if it so elects, to assume at its own expense the defense of such claim, suit, action or proceeding, in which event such defense shall be conducted by counsel chosen by the Owner; but if the Owner shall elect not to assume such defense, it shall reimburse such Indemnified Party for the reasonable fees and expenses of any counsel retained by such Indemnified Party. If at any time the Indemnified Party becomes dissatisfied, in its reasonable discretion, with the selection of counsel by the Owner, a new mutually agreeable counsel shall be retained at the expense of the Owner. Each Indemnified Party agrees that the Owner shall have the sole right to compromise, settle or conclude any claim, suit, action or proceeding against any of the Indemnified Parties. Notwithstanding the foregoing, each Indemnified Party shall have the right to employ counsel in any such action at their own expense; and provided further that such Indemnified Party shall have the right to employ counsel in any such action and the fees and expenses of such counsel shall be at the expense of the Owner, if: (i) the employment of counsel by such Indemnified Party has been authorized by the Owner, (ii) there reasonably appears that there is a conflict of interest between the Owner and the Indemnified Party in the conduct of the defense of such action (in which case the Owner shall not have the right to direct the defense of such action on behalf of the Indemnified Party) or (iii) the Owner shall not in fact have employed counsel to assume the defense of such action. The Owner shall also indemnify the Indemnified Parties from and against all costs and expenses, including reasonable attorneys' fees, lawfully incurred in enforcing any obligations of the Owner under this Agreement. The obligations of the Owner under this Section shall survive the termination of this Agreement and shall be in addition to any other rights, including without limitation, rights to indemnity which any Indemnified Party may have at law, in equity, by contract or otherwise.

None of the Investor, the City, or the ESID shall have any liability to the Owner or any other Person on account of (i) the Owner engaging a contractor from the list of contractors submitted by the ESID or the Investor to the Owner, (ii) the services performed by the contractor, or (iii) any neglect or failure on the part of the contractor to perform or properly perform its services. None of the Investor, the City, or the ESID assumes any obligation to the Owner or any other Person concerning contractors, the quality of construction of the Project or the absence of defects from the construction of the Project. The making of a Project Advance by the Investor shall not constitute the Investor's approval or acceptance of the construction theretofore completed. The Investor's inspection and approval of the budget, the construction work, the improvements, or the workmanship and materials used in the improvements, shall impose no liability of any kind on the Investor, the sole obligation of the Investor as the result of such inspection and approval being to make the Project Advances if, and to the extent, required by this Agreement. Any disbursement made by the Investor without the Investor having received each of the items to which it is entitled under this Agreement shall not constitute breach or modification of this Agreement, nor shall any written amendment to this Agreement be required as a result.

Section 6.5. Notices. All notices, certificates, requests or other communications under this Agreement shall be in writing and shall be deemed to be sufficiently given when mailed by registered or certified mail, postage prepaid, and addressed to the appropriate Notice Address.

The Parties, by notice given under this Agreement to the others, may designate any further or different addresses to which subsequent notices, certificates, requests or other communications shall be sent.

Section 6.6. Extent of Covenants; No Personal Liability. All covenants, obligations, and agreements of the ESID and the City contained in this Agreement shall be effective to the extent authorized and permitted by applicable law. No covenant, obligation, or agreement shall be deemed to be a covenant, obligation, or agreement of any present or future member, officer, agent, or employee of the ESID, the Board, the Owner, the City, the City Council, or the Investor in other than his or her official capacity; and none of the members of the Board or the City Council, nor any official of the ESID, the Owner, the City, or the Investor executing this Agreement shall be liable personally on this Agreement or be subject to any personal liability or accountability by reason of the covenants, obligations, or agreements of the ESID, the Owner, the City, or the Investor contained in this Agreement.

Section 6.7. Binding Effect; Assignment; Estoppel Certificates. This Agreement shall inure to the benefit of and shall be binding in accordance with its terms upon the Parties. Except as specifically provided below, this Agreement shall not be assigned by the any of the Parties except as may be necessary to enforce or secure payment of the Special Assessments.

Notwithstanding anything in this Agreement to the contrary, the Owner freely may sell the Property and the Project or any portion of the Property and the Project from time to time and may assign this Agreement to an arms-length, good faith purchaser of the Property but only after notice of such assignment is given to the Investor, and only upon (i) the execution and delivery to the City, the Investor, and the ESID of an "Assignment and Assumption of Energy Project Cooperative Agreement" in the form attached to, and incorporated into, this Agreement as **Exhibit H**; and (ii) the execution and delivery to the Investor of an assignment of all construction contracts for the Project. The Parties acknowledge and agree that the Assignment and Assumption of Energy Project Cooperative Agreement includes the assignment and assumption of the Special Assessment Agreement and the Owner Consent. Following any assignment by the Owner as described above, all obligations of the Owner contained in this Agreement, the Special Assessment Agreement, and the Owner Consent shall be obligations of the assignee, and the assigning Owner shall be released of its obligations to a corresponding extent.

Notwithstanding anything in this Agreement to the contrary, the Investor shall have the unrestricted right at any time or from time to time, and without the Owner's consent, to assign all or any portion of its rights and obligations under this Agreement, and may sell or assign any and all liens received directly or indirectly from the City to any Person (each, an "Investor Assignee"), and the Owner agrees that it shall execute, or cause to be executed, such documents, including without limitation, amendments to this Agreement and to any other documents, instruments and agreements executed in connection with this Agreement as the Investor shall deem necessary to effect the foregoing so long as such amendment does not materially adversely impact the Owner's rights and obligations under this Agreement. Any Investor Assignee shall be a party to this Agreement and shall have all of the rights and obligations of the Investor under this Agreement (and under any and all other guaranties, documents, instruments and agreements executed in connection with this Agreement) to the extent that such rights and obligations have

been assigned by the Investor pursuant to the assignment documentation between the Investor and such Investor Assignee, and the Investor shall be released from its obligations under this Agreement and under any and all other guaranties, documents, instruments and agreements executed in connection with this Agreement to a corresponding extent. If, at any time, the Investor assigns any of the rights and obligations of the Investor under this Agreement (and under any and all other guaranties, documents, instruments and agreements executed in connection with this Agreement) to an Investor Assignee, the Investor shall give prompt notice of such assignment to the other Parties.

In addition, the Investor shall have the unrestricted right at any time and from time to time, and without the consent of or notice of the Owner, to grant to one or more Persons (each, a "Participant") participating interests in Investor's obligation to make Project Advances under this Agreement or to any or all of the loans held by Investor under this Agreement. In the event of any such grant by the Investor of a participating interest to a Participant, whether or not upon notice to the Owner, the Investor shall remain responsible for the performance of its obligations under this Agreement, and the Owner shall continue to deal solely and directly with the Investor in connection with the Investor's rights and obligations under this Agreement. The Owner agrees that the Investor may furnish any information concerning the Owner in its possession from time to time to prospective Investor Assignees and Participants.

This Agreement may be enforced only by the Parties, their permitted assignees, and others, who may, by law, stand in their respective places.

Any Party shall at any time and from time to time, upon not less than 30 days' prior written notice by the other party, execute, acknowledge and deliver to such party a statement in writing certifying that: (i) this Agreement is unmodified and in full force and effect (or, if there has been any modification of this Agreement, that the same is in full force and effect as modified and stating the modification or modifications); (ii) to the best of such Party's actual knowledge (without any duty of inquiry) there are no continuing Events of Default (or, if there is a continuing Event of Default, stating the nature and extent of such Event of Default); (iii) that, to the best of such Party's actual knowledge (without any duty of inquiry) there are no outstanding damages or liability arising from an Event of Default (or, if there is any outstanding damages or liability, stating the nature and extent of such damages or liability); (iv) if such certificate is being delivered by the Owner, the dates to which the Special Assessments have been paid; and (v) if such certificate is being delivered by the Investor, the dates to which the Special Assessments have been paid to the Investor. It is expressly understood and agreed that any such certificate delivered pursuant to this Section 6.7 may be relied upon by any prospective assignee of the Owner or any prospective Investor Assignee.

Section 6.8. Amendments and Supplements. Except as otherwise expressly provided in this Agreement, this Agreement may not be amended, changed, modified, altered or terminated except by unanimous written agreement signed by each of the Parties materially affected by such proposed amendment, change, modification, alteration, or termination. For purposes of this Section, a materially affected Party is a Party with respect to which a material right or obligation under this Agreement is proposed to be amended, changed, modified, altered, or terminated. Any attempt to amend, change, modify, alter, or terminate this Agreement except

by unanimous written agreement signed by all of the materially affected Parties or as otherwise provided in this Agreement shall be void.

Section 6.9. Execution Counterparts. This Agreement may be executed in counterpart and in any number of counterparts, each of which shall be regarded as an original and all of which together shall constitute but one and the same instrument.

Section 6.10. Severability. If any provision of this Agreement, or any covenant, obligation, or agreement contained in this Agreement is determined by a court to be invalid or unenforceable, that determination shall not affect any other provision, covenant, obligation, or agreement, each of which shall be construed and enforced as if the invalid or unenforceable portion were not contained in this Agreement. That invalidity or unenforceability shall not affect any valid and enforceable application of the provision, covenant, obligation, or agreement, and each such provision, covenant, obligation or agreement shall be deemed to be effective, operative, made, entered into, or taken in the manner and to the full extent permitted by law.

Section 6.11. Governing Law. This Agreement shall be deemed to be a contract made under the laws of the State and for all purposes shall be governed by and construed in accordance with the laws of the State.

IN WITNESS WHEREOF, the Parties have each caused this Agreement to be duly executed in their respective names, all as of the date first written above.

BEAVERCREEK ENERGY SPECIAL  
IMPROVEMENT DISTRICT, INC., as the ESID

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_



GREENE INNKEEPERS, LLC, as the Owner

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

PACE EQUITY LLC, as the Investor

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

CITY OF BEAVERCREEK, OHIO, as the  
City

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

## CITY FISCAL OFFICER CERTIFICATE

The undersigned, Fiscal Officer of the City of Beavercreek, Ohio, hereby certifies that the moneys required to meet the obligations of the City during the year 2019 under the foregoing Energy Project Cooperative Agreement have been lawfully appropriated by the City Council of the City of Beavercreek, Ohio for such purpose and are in the treasury of the City or in the process of collection to the credit of an appropriate fund, free from any previous encumbrances. This Certificate is given in compliance with Ohio Revised Code Sections 5705.41 and 5705.44.

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Fiscal Officer  
City of Beavercreek, Ohio

Dated: [\_\_\_\_], 2019

## **EXHIBIT A**

### **DEFINITIONS**

As used in this Agreement, the following words have the following meanings:

“*Agreement*” means this Energy Project Cooperative Agreement, dated as of \_\_\_\_\_, 2019, by and between the ESID, the Owner, the Investor, and the City, as the same may be amended, modified, or supplemented from time to time in accordance with its terms.

“*Board*” means the Board of Directors of the ESID.

“*City*” means the City of Beavercreek, Ohio.

“*City Council*” means the Council of the City of Beavercreek, Ohio.

“*Completion Date*” means the latest date on which substantial completion of the Project, in accordance with the Plans occurs, which date shall be established by the Completion Certificate attached to this Agreement as **Exhibit D**.

“*County*” means the County of Greene, Ohio.

“*County Auditor*” means the Auditor of the County.

“*County Prosecutor*” means the Prosecuting Attorney of the County.

“*County Treasurer*” means the Treasurer of the County.

“*Delinquency Amount*” means any penalties or interest which may be due on or with respect to any installment of the Special Assessments and which are not paid or taxable to any party other than the Investor under law.

“*Disbursement Request Form*” means the form attached to this Agreement as **Exhibit C**, which form shall be submitted by the Owner in order to receive disbursements from the Project Account.

“*Disbursing Agent*” means [First Financial Bank], in its capacity as “Construction Servicer” under the Disbursing Agreement.

“*Disbursing Agreement*” means the Escrow, Disbursing, and Account Control Agreement dated as of \_\_\_\_\_, 2019 by and among the Owner, the Investor, and [First Financial Bank], as Construction Servicer and as Senior Lender, as the same may be validly amended or supplemented and in effect from time to time.

“*ESID*” means the Beavercreek Energy Special Improvement District, Inc., a nonprofit corporation and energy special improvement district organized under the laws of the State of Ohio.

*"Governmental Authority"* means the government of the United States of America, any other nation or any political subdivision thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government.

*"Investor"* means PACE Equity LLC, a limited liability company duly organized and validly existing under the laws of the State of Wisconsin, together with any Investor Assignee.

*"Lender"* means any Person which has loaned money to the Owner to pay or refinance the costs of acquiring, financing, refinancing, or improving the Property and which loan is secured by a mortgage interest in the Property, or any permitted successors or assigns of such Person, including, initially, and without limitation, [First Financial Bank].

*"Lender Loan Documents"* means any loan agreement or loan agreements, mortgage or mortgages, and any other documents and instruments executed and delivered in connection with the a loan from a Lender, as they may be amended, modified, and supplemented from time to time under their terms.

*"Notice Address"* means:

(a) As to the City: City of Beavercreek, Ohio  
1368 Research Park Drive  
Beavercreek, Ohio 45432  
Attention: Director of Development

(b) As to the ESID: Beavercreek Energy Special  
Improvement District, Inc.  
[ ]  
[ ]  
Attention:

With a Copy To: Caleb Bell  
Bricker & Eckler LLP  
100 South Third Street  
Columbus, Ohio 43215

(c) As to the Owner Greene Innkeepers, LLC  
[4404 Buckeye Lane, Suite 220]  
[Beavercreek, Ohio 45440]

With a Copy To: [Kristin Finch]  
[Coolidge Wall Co., L.P.A.]  
[33 West First Street, Suite 200]  
[Dayton, Ohio 45402]

(d) As to the Investor

PACE Equity LLC  
731 North Jackson, Suite 420  
Milwaukee, Wisconsin 53202  
Attention: Kevin Moyer

*“Ordinance Levying Assessments”* means any resolution or ordinance passed, enacted, or adopted by the City pursuant to Ohio Revised Code Section 727.25 with respect to levying special assessments on real property within the ESID.

*“Ordinance to Proceed”* means any resolution or ordinance passed, enacted, or adopted by the City pursuant to Ohio Revised Code Section 727.23 with respect to levying special assessments on real property within the ESID.

*“Owner”* means Greene Innkeepers, LLC, a limited liability company duly organized and validly existing under the laws of the State of Ohio, and any permitted successors or assigns.

*“Owner Consent”* means the Owner Consent dated as of \_\_\_\_\_, 2019 by the Owner and recorded in the records of the Greene County Recorder with respect to the Property.

*“Parties”* means the ESID, the Owner, the Investor, and the City.

*“Person”* or words importing persons mean firms, associations, partnerships (including without limitation, general and limited partnerships), limited liability companies, joint ventures, societies, estates, trusts, corporations, public or governmental bodies, political subdivisions, other legal entities, and natural persons.

*“Plan”* means the Beavercreek Energy Special Improvement District Program Plan adopted by the City of Beavercreek, Ohio by its Resolution No. \_\_\_\_\_ of \_\_\_\_\_, 2019, and any and all supplemental plans approved by the ESID and the City.

*“Project”* means the special energy improvement project described in the Plan with respect to the Property, for which Special Assessments are to be levied by the City, all in accordance with the Plan.

*“Project Account”* means the segregated account in the custody of the Investor for the benefit of the Owner which contains the Project Advance, and out of which disbursements may be made in accordance with Article IV of this Agreement.

*“Project Advance”* means the amount of immediately available funds to be transferred, set over, paid to, and held in the Project Account established pursuant to Section 4.1 of this Agreement for the benefit of the Owner.

*“Property”* means the real property subject to the Plan.

*"Repayment Schedule"* means the schedule attached to, and incorporated into, this Agreement as Exhibit B, which schedule establishes the dates and amounts for the repayment of the Project Advance by the Special Assessments paid by the Owner.

*"Required Builder's Risk Insurance Coverage"* means at any time insurance coverage maintained with generally recognized, responsible insurance companies qualified to do business in the State in the minimum amount of the full replacement value of the Project and Project Site, insuring the Project against loss or damage during construction and containing loss deductible provisions not to exceed \$10,000, which insurance coverage shall name the Investor as lender loss payee.

*"Required Business Interruption Insurance Coverage"* means at all times after the Completion Date, business interruption and rent loss insurance maintained with generally recognized, responsible insurance companies qualified to do business in the State in a commercially reasonable minimum amount, which insurance coverage shall name the Investor as lender loss payee.

*"Required Flood Insurance Coverage"* means, as applicable, (i) if the Property or any part of the Property is identified by the United States Secretary of Housing and Urban Development as being situated in an area now or subsequently designated as having special flood hazards (including, without limitation, those areas designated as Zone A or Zone V), flood insurance in an amount equal to the lesser of: (a) the minimum amount required, under the terms of coverage, to compensate for any damage or loss on a replacement basis (or the unpaid balance of the Project Advances if replacement cost coverage is not available for the type of building insured); or (b) such lesser amount as may be required by the Investor, and containing a loss deductible with respect not in excess of \$10,000 per occurrence; and (ii) earthquake insurance in amounts and in form and substance satisfactory to the Investor in the event the Property is located in an area with a high degree of seismic activity, provided that the insurance pursuant to this section shall be on terms consistent with the Required Public Liability Insurance Coverage.

*"Required Insurance Coverage"* means, collectively, the Required Builder's Risk Insurance Coverage, the Required Business Interruption Insurance Coverage, the Required Flood Insurance Coverage (if any), the Required Property Insurance Coverage and the Required Public Liability Insurance Coverage, each of which, in addition to the requirements described in their respective definitions, (i) must provide for 10 days' notice to the Investor in the event of cancellation or nonrenewal and (ii) must name as an additional insured (mortgagee/loss payee) the Investor.

*"Required Property Insurance Coverage"* means at any time insurance coverage evidenced on Acord 27 and maintained with generally recognized, responsible insurance companies qualified to do business in the State in the amount of (i) the then full replacement value of the Project and Property, insuring the Project against loss or damage by fire, windstorm, tornado and hail and extended coverage risks on a comprehensive all risk/special form insurance policy and containing loss deductible provisions of not to exceed \$10,000, which insurance coverage shall name the Investor as loss payee/mortgagee.



*“Required Public Liability Insurance Coverage”* means at any time commercial general accident and public liability insurance coverage evidenced on Acord 25 and maintained with generally recognized, responsible insurance companies qualified to do business in the State with coverage limits in the maximum amount of \$2,000,000 per occurrence for death or bodily injury and property damage liability combined, with loss deductible provisions of not to exceed \$10,000, which insurance coverage shall name the Investor as additional insureds.

*“Resolution of Necessity”* means any resolution or ordinance passed, enacted, or adopted by the City pursuant to Ohio Revised Code Section 727.12 with respect to levying special assessments on real property within the ESID.

*“Special Assessment Act”* means, collectively, Ohio Revised Code Section 727.01 *et seq.*, Ohio Revised Code Section 1710.01 *et seq.*, Ohio Revised Code Section 323.01 *et seq.*, Ohio Revised Code Section 319.01 *et seq.*, Ohio Revised Code Section 5721.01 *et seq.*, and related laws, Resolution No. \_\_\_\_\_ approving the Petition and Plan and declaring the necessity of the Project passed on \_\_\_\_\_, 2019, Ordinance No. \_\_\_\_\_ determining to proceed with the Project adopted on \_\_\_\_\_, 2019, and Ordinance No. \_\_\_\_\_ levying the Special Assessments adopted on \_\_\_\_\_, 2019, all with respect to levying special assessments on real property within the ESID.

*“Special Assessments”* means the special assessments levied pursuant to the Special Assessment Act by the City with respect to the Project, a schedule of which is attached to, and incorporated into, the Plan.

*“State”* means the State of Ohio.

**EXHIBIT B**  
**REPAYMENT SCHEDULE**

**EXHIBIT C**

**DISBURSEMENT REQUEST FORM**

[See Attached]

Request No. \_\_\_\_\_

Date: \_\_\_\_\_

### APPLICATION FOR PAYMENT

To: PACE Equity, LLC

Under the Energy Project Cooperative Agreement dated as of \_\_\_\_\_, 2019 (the **Energy Project Cooperative Agreement**), by and among Greene Innkeepers, LLC (**Owner**), PACE Equity LLC (**Investor**), the Beavercreek Energy Special Improvement District, Inc. (the **ESID**), and the City of Beavercreek, Ohio (the **City**), and under the Escrow, Disbursement, and Account Control Agreement dated as of \_\_\_\_\_, 2019 (the **Disbursement Agreement**) by and among the Owner, the Investor, and [First Financial Bank], as Construction Servicer (in that capacity, the **Disbursement Agent**) and as Senior Lender, the undersigned hereby requests the disbursement of construction funds from the Disbursement Agent in accordance with this request, and hereby certifies as follows:

1. All capitalized terms in this Application for Payment, unless otherwise defined herein, have the meanings specified in the Energy Project Cooperative Agreement.
2. The amounts requested either have been paid by the Owner, or are justly due to contractors, subcontractors, materialmen, engineers, architects or other persons (whose names are stated on *Attachment I* hereto and whose invoices are attached hereto) in accordance with the invoice(s) attached hereto who have performed necessary and appropriate work or furnished necessary and appropriate materials, equipment or furnishings in the acquisition, construction and installation of the Project.
3. Final lien waivers or releases executed by all parties receiving payment directly from the previous draw request through the current draw request are *attached hereto*.
4. *Attached hereto* is a completed AIA Document g702 or equivalent document, signed by the Owner's general contractor for the Project *and* a list of the applicable payees if payment will be made to an entity or entities other than the Owner's general contractor.
6. Each disbursement to the payees listed hereunder shall constitute a representation and warranty by the Owner, as of the date that such disbursement is made, that the conditions contained in Section 4.2 of the Energy Project Cooperative Agreement have been satisfied.

[Signature page follows]

**Greene Innkeepers, LLC**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**Date:** \_\_\_\_\_

**Request No.** \_\_\_\_\_

**ATTACHMENT I**  
**TO APPLICATION FOR PAYMENT**

**SCHEDULE OF PAYMENTS REQUESTED**

*(Payments to be made in accordance with instructions on invoice attached hereto)*

<b>Payee Name</b>	<b>Description</b>	<b>Total Payment</b>	<b>Payment Directions</b>

## **EXHIBIT D**

### **FORM OF COMPLETION CERTIFICATE**

Greene Innkeepers, LLC (the **Owner**) hereby certifies that the Project, as such term is defined in the Energy Project Cooperative Agreement entered into by and between the Owner, the Beavercreek Energy Special Improvement District, Inc., the City of Beavercreek, Ohio and PACE Equity LLC (the **Investor**) dated as of \_\_\_\_\_, 2019 (the **Agreement**) has been completed at 2667 Fairfield Commons Boulevard, Beavercreek, Ohio 45431 (the **Property**) in strict compliance with the requirements of the Agreement.

Note: Capitalized terms used but not defined in this Completion Certificate have the meaning assigned to them in the Agreement to which a form of this Completion Certificate is attached and of which it forms a part.

#### **THE OWNER HEREBY CERTIFIES:**

(a) That the acquisition, construction, equipping, installation, and improvement of the Project was substantially completed on \_\_\_\_\_ in accordance with the construction contract, and the Owner has no unresolved complaints regarding the work;

(b) The Project has been completed in all material respects in accordance with the plans and specifications, permits, and budget for the Project approved by the Investor;

(c) Owner has complied, and will continue to comply with all applicable statutes, regulations, and resolutions or ordinances in connection with the Property and the construction of the Project;

(d) the Owner holds fee ownership of the Property;

(e) the general contractor for the project has not offered the Owner any payment, refund, or any commission in return for completing Project; and

(f) all funds provided to the Owner by the Investor for the Project have been used in accordance with the Agreement

[Balance of Page Intentionally Left Blank]

NOTICE: DO NOT SIGN THIS COMPLETION CERTIFICATE UNLESS YOU AGREE TO EACH OF THE ABOVE STATEMENTS.

Greene Innkeepers, LLC, as the Owner

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_



**EXHIBIT E**  
**CLOSING COSTS DETAIL**

Pursuant to Section 4.2 of the foregoing Energy Project Cooperative Agreement, the Investor, on the date on which the Energy Project Cooperative Agreement becomes effective, shall disburse to the ESID or to the respective payee set forth below, the following closing costs:

**EXHIBIT F**  
**CONSENT OF MORTGAGEE**

[See Attached]

## EXHIBIT G

### FORM OF ASSIGNMENT AND ASSUMPTION OF ENERGY PROJECT COOPERATIVE AGREEMENT

#### ASSIGNMENT AND ASSUMPTION OF ENERGY PROJECT COOPERATIVE AGREEMENT

\_\_\_\_\_ (“Assignor”), in consideration of the sum of \$ \_\_\_\_\_ in hand paid and other good and valuable consideration, the receipt and sufficiency of which is acknowledged by Assignor’s execution of this Assignment and Assumption of Energy Project Cooperative Agreement (“Assignment”), assigns, transfers, sets over, and conveys to \_\_\_\_\_ (“Assignee”) all of Assignor’s right, title, and interest in and to that certain Energy Project Cooperative Agreement dated as of \_\_\_\_\_, 2019 between the Beavercreek Energy Special Improvement District, Inc. (the “ESID”), Assignor, PACE Equity LLC, and the City of Beavercreek, Ohio (the “Energy Project Cooperative Agreement”).

By executing this Assignment, Assignee accepts the assignment of, and assumes all of Assignor’s duties and obligations under, the Energy Project Cooperative Agreement. Assignee further represents and warrants that it has taken title to the “Property,” as that term is defined in the Energy Project Cooperative Agreement, subject to the Special Assessment Agreement dated as of even date with the Energy Project Cooperative Agreement between the Greene County Treasurer, the City of Beavercreek, Ohio, the ESID, Greene Innkeepers, LLC, and PACE Equity LLC (the “Special Assessment Agreement”) and to the “Owner Consent” dated as of \_\_\_\_\_, 2019 by Greene Innkeepers, LLC and recorded in the records of the Greene County Recorder with respect to the Property. By executing this Assignment, Assignee accepts the assignment of, and assumes all of Assignor’s duties and obligations under, the Special Assessment Agreement and the Owner Consent.

Assignor and Assignee acknowledge and agree that executed copies of this Assignment shall be delivered to the City, the Investor, and the ESID, as each of those terms are defined in the Energy Project Cooperative Agreement, all in accordance with Sections 3.4(a) and 6.7 of the Energy Project Cooperative Agreement

In witness of their intent to be bound by this Assignment, each of Assignor and Assignee have executed this Assignment this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, which Assignment is effective this date. This Assignment may be executed in any number of counterparts, which when taken together shall be deemed one agreement.

[Signature Pages Follow]

ASSIGNOR:

[\_\_\_\_\_]

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

ASSIGNEE:

[\_\_\_\_\_]

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**EXHIBIT I**

**INVESTOR ACCOUNT AND PAYMENT INFORMATION**

[Insert Investor Account and Payment Information]

SPECIAL ASSESSMENT AGREEMENT

by and among

COUNTY TREASURER OF GREENE COUNTY, OHIO  
("Treasurer"),

And

CITY OF BEAVERCREEK, OHIO  
("City"),

And

BEAVERCREEK ENERGY SPECIAL IMPROVEMENT DISTRICT, INC.  
("District"),

And

GREENE INNKEEPERS, LLC  
("Owner")

And

PACE EQUITY LLC  
("Investor")

Dated as of \_\_\_\_\_, 2019

## SPECIAL ASSESSMENT AGREEMENT

THIS SPECIAL ASSESSMENT AGREEMENT (this "Agreement") is made effective as of \_\_\_\_\_, 2019, by and among the County Treasurer of Greene County, Ohio (the "Treasurer"), the City of Beavercreek, Ohio (the "City"), the Beavercreek Energy Special Improvement District, Inc. ("District"), Greene Innkeepers, LLC (the "Owner"), and PACE Equity LLC (together with its permitted successors and assigns, the "Investor").

### BACKGROUND:

WHEREAS, the District was created under Ohio Revised Code Chapters 1702 and 1710 and established pursuant to Resolution No. \_\_\_\_\_ of the Council of the City of Beavercreek, Ohio (the "Council") approved on \_\_\_\_\_, 2019; and

WHEREAS, the Owner has determined that it is in its best interests to cause the acquisition, installation, equipment, and improvement of special energy efficiency improvements, including, without limitation, high-efficiency building envelope, high-efficiency lighting, high-efficiency HVAC systems, energy efficient domestic hot water plumbing systems resulting in heating energy savings, and related improvements (collectively, the "Project") on the real property located within Greene County, Ohio (the "County") and the City, and as more fully described in **Exhibit A** to this Agreement (the "Assessed Lands"); and

WHEREAS, the costs of the Project are being funded in part through an advance in the amount of \$3,011,597.00 (the "Project Advance") to the Owner pursuant to an Energy Project Cooperative Agreement dated as of \_\_\_\_\_, 2019 (the "Energy Project Cooperative Agreement") between the District, the Investor, the Owner, and the City; and

WHEREAS, to secure the repayment of the principal of, and the payment of any premium, fees, and unpaid interest on, the Project Advance used to finance the Project (the "Project Costs"), (i) the Owner signed and delivered to the Clerk of the Council a Petition for Special Assessments for Special Energy Improvement Projects and Affidavit (the "Petition") for the acquisition, installation, equipment, and improvement of the Project and evidencing the Owner's agreement to the levy and collection of special assessments by the City (the "Special Assessments") on the Assessed Lands, which are located within the District, in amounts sufficient to pay the Project Costs, and (ii) the City (a) has taken all the necessary actions required by Ohio Revised Code Chapter 727, including, without limitation, the passage of the assessing resolution or ordinance pursuant to the requirements of Ohio Revised Code Section 727.25, for the levying of the Special Assessments and has caused or will cause the Special Assessments to be certified to the County Auditor of Greene County, Ohio (the "County Auditor") for collection by the Treasurer in semi-annual installments, and (b) hereby has agreed to transfer to the Investor the payments of Special Assessments received to pay the Project Costs.

WHEREAS, the Owner agrees that the delivery of the Petition and the requests and agreements made in the Petition are irrevocable and that the parties to this Agreement have acted and will act in reliance on the agreements contained in the Petition; and



WHEREAS, pursuant to the Petition, the Special Assessments have been levied against the Assessed Lands as described in the Petition and pursuant to this Agreement the Owner is willing to agree to make Special Assessment payments in accordance with the Petition; and

WHEREAS, Ohio Revised Code Chapters 323 and 5721 set forth certain parameters and timing requirements for the foreclosure of property on which taxes and assessments, including the Special Assessments, are due and owing and remain unpaid; and

WHEREAS, upon the occurrence of an Event of Default pursuant to the Energy Project Cooperative Agreement, it may be necessary for the District to foreclose on the lien of the Special Assessments with respect to the Assessed Lands as set forth in Section 2 of this Agreement; and

WHEREAS, in consideration of the Project Advance, the Owner is willing to consent to an expedited foreclosure process with respect to the lien of the Special Assessments, the form of the consent being attached hereto as Exhibit B (the "Owner Consent") and the Owner Consent with respect to the foreclosure of the Special Assessments as soon as possible (as referenced in Section 2 hereof) shall be a covenant running with Assessed Lands and binding upon the Owner and upon future owners of the Assessed Lands until the Project Costs are paid in full; and

WHEREAS, based on the Owner Consent and other considerations, at the request of the District, upon the occurrence of an Event of Default under the Energy Project Cooperative Agreement, the Treasurer and the City have agreed to foreclose the lien of the Special Assessments as soon as possible as described herein; and

WHEREAS, if any assessments, including, without limitation, the Special Assessments, payments in lieu of taxes, real property taxes, or other governmental charges levied on the Assessed Lands are not paid when due and thereafter remain delinquent, the Treasurer, pursuant to Ohio Revised Code Sections 5721.30 through 5721.41 (the "Delinquent Tax Lien Sale Act"), specifically Ohio Revised Code Section 5721.33, may, in his discretion, but is not required to, negotiate with one or more persons the sale of any number of tax certificates ("Tax Certificates") which evidence the liens (the "Tax Liens") of the State of Ohio (the "State") and its applicable taxing districts for such delinquent assessments, including Special Assessments, real property taxes, payments in lieu of taxes, governmental charges, or penalties and interest on such Assessed Lands; and

WHEREAS, pursuant to the Delinquent Tax Lien Sale Act, the Treasurer, in his discretion, may sell such Tax Certificates at a discount from the full amount of the general real estate taxes, assessments, including the Special Assessments, penalties, and interest that have become delinquent; and

WHEREAS, if the Treasurer were to sell such Tax Certificates at a discount (other than in accordance with the provisions of this Agreement), the proceeds of such sale representing the delinquent Special Assessments might be insufficient to pay the Project Costs; and

WHEREAS, the Treasurer does not desire to take any action with respect to the collection of the Special Assessments that might adversely affect the repayment of the Project Advance without the consent of the District or adversely affect the payment of the Project Costs without the consent of the District; and

WHEREAS, the Treasurer has agreed to remit to the District, in the event of a default under the Energy Project Cooperative Agreement, as set forth in this Agreement, amounts collected by the Treasurer and relating to the Special Assessments, including without limitation amounts collected by the Treasurer as a result of foreclosure of the lien of the Special Assessments on the Assessed Lands and including amounts received from a sale of Tax Certificates pursuant to the Delinquent Tax Lien Sale Act;

NOW, THEREFORE, in consideration of the foregoing and of the mutual covenants contained herein and other good and valuable consideration, the receipt of which is hereby acknowledged, and desiring to be legally bound hereunder, the parties hereto covenant and agree as follows:

Section 1.     Special Assessments.

1.1     The Owner, prior to the execution and delivery of this Agreement, signed and delivered to the Clerk of the Council the Petition for the acquisition, installation, equipment, and improvement of the Project and evidencing the agreement of the Owner to the levy of the Special Assessments as security for the Project Advance. The Owner agrees that the delivery of the Petition and the requests and agreements made therein are irrevocable and that the parties hereto have acted and will act in reliance on the agreements contained in that Petition. The City shall take all necessary actions required by Ohio Revised Code Chapter 727 to levy and collect the Special Assessments on the Assessed Lands. On \_\_\_\_\_, 2019 the City passed Ordinance No. \_\_\_\_\_ pursuant to the requirements of Ohio Revised Code Section 727.25 for the levying of the Special Assessments (the "Assessing Ordinance"). The Clerk of the Council certified (or caused to be certified) the Assessing Ordinance to the County Auditor as set forth in the Petition.

1.2     The City shall cause the Special Assessments, as set forth in the Assessment Schedule attached to the Petition, to be certified to the County Auditor on or before the last date for the certification of special assessments to the County Auditor of each year during which the Special Assessments are to be levied pursuant to the Assessment Schedule. The parties acknowledge that pursuant to such certification, the Special Assessments are expected to be collected and paid to the City pursuant to Ohio Revised Code Chapters 319, 321, 323, and 727.

1.3     In the event the Project Advance is prepaid or redeemed in accordance with the Energy Project Cooperative Agreement, in whole or in part, the parties shall, in cooperation with the Owner, and to the extent permitted by law, cause the aggregate lien of the Special Assessments to be no greater than the remaining principal of and interest and premium, if any, on the Project Advance through maturity.

1.4 To the extent that the Owner prepays any of the required payments to the Investor pursuant to the Energy Project Cooperative Agreement, then the amounts of the Special Assessments shall be reduced in accordance with the appropriate Assessment Schedule attached to the Petition.

1.5 To facilitate the repayment of the Project Advance, the City, pursuant to Section 2.2 of the Energy Project Cooperative Agreement, assigned to the Investor all of its right, title, and interest in and to the Special Assessments, the funds of the City established to collect and hold the Special Assessment, and any other property received or to be received from the City under the Energy Project Cooperative Agreement. The Treasurer, the City, the District, the Owner, and the Investor each hereby acknowledges, agrees with, and consents to those assignments.

1.6 Pursuant to Section 2.5 of the Energy Project Cooperative Agreement, the District assigned to the Investor any and all of its right, title, and interest it may have in and to the Special Assessments related to the District actually received by or on behalf of the City under the Energy Project Cooperative Agreement. The Treasurer, the City, the District, the Owner, and the Investor each hereby acknowledges, agrees with, and consents to those assignments.

1.7 Notwithstanding anything in this Agreement to the contrary, the Treasurer's obligations under this Agreement are not and shall not be secured by an obligation or pledge of any moneys raised by taxation. The Treasurer's obligations shall be limited to the moneys levied, collected, and received in respect of the Special Assessments and any County-imposed collection fees, charges, or penalties. The Treasurer's obligations under this Agreement do not and shall not represent or constitute a debt or pledge of the faith and credit or taxing power of the County.

1.8 Notwithstanding anything in this Agreement to the contrary, the City's obligations under this Agreement are not and shall not be secured by an obligation or pledge of any moneys raised by taxation. The City's obligation under this Agreement shall be limited to any moneys received from the County in respect of the Special Assessments and any County-imposed collection fees, charges, or penalties. The City's obligations under this Agreement do not and shall not represent or constitute a debt or pledge of the faith and credit or taxing power of the City.

## Section 2. Foreclosure Process.

2.1 The Treasurer, the City, the Investor, and the Owner each acknowledge that the Special Assessments are to secure payments relating to the Project Advance, including the Project Costs and other amounts as provided under the Energy Project Cooperative Agreement. The Treasurer agrees that so long as the Project Advance is outstanding and the Project Costs and other amounts under the Energy Project Cooperative Agreement are secured, at least in part, by the revenues derived from the Special Assessments, upon the Treasurer's receipt of written notice from the Investor or the District, with a copy to the other of the Investor or the District, and to the Owner and the City, that an Event of Default (as defined under the Energy

Project Cooperative Agreement, as applicable) has occurred and is continuing and which notice directs Treasurer to foreclose on the lien of the Special Assessments, the Treasurer will, not later than 30 days from the date of the receipt of such notice, file and diligently prosecute a foreclosure action against the Assessed Lands, following the procedures for lien foreclosures established in Ohio Revised Code Section 323.25 and related sections. The foreclosure action shall be to collect all Special Assessments then due and owing on the Assessed Lands in accordance with the Petition. Without the prior written consent of the District and the Investor, the Treasurer will not confirm the sale of the Assessed Lands for an amount less than 100% of the amount of the Special Assessments and other general real estate taxes, payments in lieu of taxes, and assessments then due and owing with respect to the Assessed Lands, as shall be certified by the District to the Treasurer pursuant to the records of the Treasurer. All fees and expenses of the Treasurer in collecting the Special Assessments are to be included and paid for by the Owner.

2.2 The Treasurer hereby acknowledges that the City has assigned all of its right, title, and interest in and to the Special Assessments to the Investor, and that the District has assigned all of its right, title, and interest it may have in and to the Special Assessments to the Investor, and the Treasurer hereby agrees that so long as the Project Advance is outstanding and the Project Costs and other amounts under the Energy Project Cooperative Agreement are secured, at least in part, by the revenues derived from the Special Assessments, the Treasurer will not sell or negotiate the sale of one or more Tax Certificates related to the Assessed Lands for an amount less than 100% of the amount levied and certified for collection without the prior written consent of the District and the Investor.

2.3 The Treasurer hereby covenants and agrees that if any of the general real estate taxes, payments in lieu of taxes, assessments, including the Special Assessments, governmental charges, or penalties and interest on the Assessed Lands are delinquent and the Delinquent Tax Lien Sale Act would permit the Treasurer to negotiate the sale of Tax Certificates with respect thereto, the Treasurer will, prior to giving any notice under the Delinquent Tax Lien Sale Act of a sale of Tax Certificates with respect to the Assessed Lands, give written notice to the District and the Investor regarding the same and state therein whether the Treasurer reasonably anticipates receiving no less than 100% of the general real estate taxes, payments in lieu of taxes, and assessments, including the Special Assessments, penalties and interest, originally levied and certified for collection plus other charges, including attorney's fees, or whether the Treasurer reasonably expects to receive less than 100% of the general real estate taxes, payments in lieu of taxes, and assessments, including the Special Assessments, penalties and interest, levied and certified for collection plus other charges, including attorney's fees, and in accordance with this Agreement is requesting the consent of the District and the Investor for such a sale.

2.4 The Treasurer agrees, on behalf of the County, not to utilize the authority contained in Ohio Revised Code Chapter 5722 to transfer any of the Assessed Lands to the county land reutilization corporation, to sell or convey any of the Assessed Lands to any political subdivision under the authority contained in Ohio Revised Code Chapter 5722, or to clear the

liens and encumbrances applicable to the Assessed Lands under the authority contained in Ohio Revised Code Chapter 5722 without the express written consent of the District and the Investor.

2.5 Nothing in this Agreement shall, or shall be construed to, prevent the Treasurer from selling one or more Tax Certificates with respect to the Assessed Lands to a third party without the consent of the District if the price received for the Tax Certificate or Tax Certificates equals or exceeds 100% of the delinquent general real estate taxes, assessments, including the Special Assessments, penalties and interest on the Assessed Lands outstanding against the Assessed Lands at the time of such sale.

2.6 The District and the Investor each hereby agrees that upon written notice from the Treasurer pursuant to Section 2.1 of this Agreement, it, within 30 days of receipt of the Treasurer's notice, shall give a written response to the Treasurer indicating therein whether it consents to the request for sale of a Tax Certificate or Tax Certificates.

2.7 No delay or failure of the District or the Investor to give a written response shall be construed to be a consent to such request or to be a waiver of the right to give such consent. No consent or refusal thereof by the District or the Investor in response to a request by the Treasurer shall extend to or affect any subsequent request of the Treasurer or shall impair the rights of the District or the Investor with respect any such subsequent request.

2.8 So long as the Project Costs are outstanding, the Treasurer hereby covenants and agrees (a) to remit to the City all Special Assessments collected from the Assessed Lands in semi-annual installments in the same manner and at the same time as real property taxes are paid to the City in accordance with Ohio Revised Code Chapter 323, including any delinquency procedures, penalties, and interest provided for therein; (b) to the extent the Treasurer receives amounts collected from Tax Certificates, as provided for in Ohio Revised Code Chapter 323, after payment of reasonable fees and expenses of the Treasurer, all amounts collected by the Treasurer from Tax Certificates shall be remitted to the City; and (c) to the extent the Treasurer seeks and is appointed as receiver for the Assessed Lands, as provided for in Ohio Revised Code Chapter 323, after payment of reasonable fees and expenses of the Treasurer, all amounts collected by the Treasurer, as receiver for the Assessed Lands and collected as a result of the Special Assessments, shall be remitted to the City.

### Section 3. Indemnification by Owner

3.1 The Owner hereby releases the District, the City, the Treasurer, the Investor, and their respective officers, directors, and employees (the "Indemnified Parties"), from, agrees that the Indemnified Parties shall not be liable for, and indemnifies the Indemnified Parties against, all liabilities, claims, costs, and expenses, including out-of-pocket and incidental expenses and legal fees, imposed upon, incurred, or asserted against Indemnified Parties, on account of: (i) any loss or damage to property or injury to or death of or loss by any person that may be occasioned by any cause whatsoever pertaining to the acquisition, installation, equipment, improvement, maintenance, operation, and use of the Owner's Project; (ii) any breach or default on the part of the Owner in the performance of any covenant, obligation, or

agreement of the Owner under the Energy Project Cooperative Agreement, or arising from any act or failure to act by the Owner, or any of the Owner's agents, contractors, servants, employees, or licensees; (iii) the Owner's failure to comply with any requirement of this Agreement; (iv) the efforts of the City and the Treasurer to collect Special Assessments; (v) any legal costs or out-of-pocket costs incurred by the District specifically related to additional approvals or actions that may be required by the District arising after the date of the Energy Project Cooperative Agreement (and in the case of such legal costs or out-of-pocket costs, agrees to pay such costs directly to the District); and (vi) any claim, action or proceeding brought with respect to any matter set forth in clause (i), (ii), (iii), (iv), or (v) above, provided, however that the Owner shall not indemnify the Indemnified Parties as provided above to the extent that any liability, claim, cost, or expenses arises out of or results from the gross negligence, willful misconduct, or breach of this Agreement or the Energy Project Cooperative Agreement of the Indemnified Parties.

3.2 The Owner agrees to indemnify, to pay, and to hold each of the Indemnified Parties harmless from and against all liabilities, and all reasonable costs and expenses, including out-of-pocket expenses and attorneys' fees, arising out of any federal, state, or local environmental laws, regulations, resolutions or ordinances, incurred by any of the Indemnified Parties as a result of the existence on or release from the Owner's Project Site of Hazardous Materials, which in any way result from any act of omission or commission of the Owner or any of its agents, employees, independent contractors, invitees, licensees, successors, assignees, or tenants.

#### Section 4. Additional Agreements and Covenants.

4.1 The agreements of the parties hereafter with respect to the foreclosure process shall be a covenant running with the Assessed Lands and, so long as Project Costs are payable from or secured, at least in part, by the revenues derived from the Special Assessments, such covenant shall be binding upon the Assessed Lands (except as released as provided in the Owner Consents), the Owner and any future owner of all or any portion of the Assessed Lands. This Agreement, the Owner Consents, and all other required documents and agreements, shall be recorded with the Greene County, Ohio Recorder's Office, so that the agreements of the parties hereafter with respect to the foreclosure process established pursuant to this Agreement is a covenant running with and is enforceable against the Assessed Lands.

4.2 If any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

4.3 This Agreement shall inure to the benefit of each of the parties, and each of their successors and assigns, all subject to the provisions of this Agreement. This Agreement may be amended only by a written instrument of the parties, and any attempt to amend or modify this Agreement without a written instrument signed by all of the parties to this Agreement shall be null and void. Notices given hereunder shall be in writing and shall be effective when actually received if delivered by hand or overnight courier, or three days after being sent by

registered or certified mail, postage prepaid, the certification receipt therefore being deemed the date of such notice, and addressed to the parties as follows:

If to City:	City of Beavercreek, Ohio 1368 Research Park Drive Beavercreek, Ohio 45432 Attention: Director of Development
If to Treasurer:	County Treasurer Greene County, Ohio 15 Greene Street Xenia, Ohio 45385
If to the District:	Beavercreek Energy Special Improvement District [                      ] [                      ] Attention: [                      ]
With a Copy To:	Caleb Bell Bricker & Eckler LLP 100 South Third Street Columbus, Ohio 43215
If to the Owner:	Greene Innkeepers, LLC [4404 Buckeye Lane, Suite 220] [Beavercreek, Ohio 45440] Attention: [                      ]
With a Copy To:	[                      ] [                      ] [                      ]
If to the Investor:	PACE Equity LLC 731 North Jackson, Suite 420 Milwaukee, Wisconsin, 53202 Attention: Kevin Moyer

4.4 (a) The Investor shall have the unrestricted right at any time or from time to time, and without the Treasurer, the City, the District, or the Owner's consent, to assign all or any portion of its rights and obligations under this Agreement and may sell or assign any and all liens received directly or indirectly from the City to any person (each, an "Investor Assignee"), and the Owner agrees that it shall execute, or cause to be executed, such documents, including without limitation, amendments to this Agreement and to any other documents, instruments and agreements executed in connection with this Agreement as the Investor shall deem necessary to

effect the foregoing. Any Investor Assignee shall be a party to this Agreement and shall have all of the rights and obligations of the Investor under this Agreement (and under any and all other guaranties, documents, instruments and agreements executed in connection with this Agreement) to the extent that such rights and obligations have been assigned by the Investor pursuant to the assignment documentation between the Investor and such Assignee, and the Investor shall be released from its obligations under this Agreement and under any and all other guaranties, documents, instruments and agreements executed in connection with this Agreement to a corresponding extent.

(b) The Investor shall have the unrestricted right at any time and from time to time, and without the consent of or notice of the Treasurer, the City, the District, or the Owner, to grant to one or more persons (each, a "Participant") participating interests in the Investor's obligation to make Project Advances under the Energy Project Cooperative Agreement or any or all of the loans held by Investor under the Energy Project Cooperative Agreement. In the event of any such grant by the Investor of a participating interest to a Participant, whether or not upon notice to the Treasurer, the City, the District, and the Owner, the Investor shall remain responsible for the performance of its obligations under the Energy Project Cooperative Agreement and the Owner shall continue to deal solely and directly with the Investor in connection with the Investor's rights and obligations under the Energy Project Cooperative Agreement.

(c) The Investor may furnish any information concerning the Owner in its possession from time to time to prospective Investor Assignees and Participants.

4.5 This Agreement shall be construed in accordance with the laws of the State of Ohio.

4.6 This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

(Signature Pages Immediately Follow)





“CITY”  
CITY OF BEAVERCREEK, OHIO

Name: \_\_\_\_\_  
Title: \_\_\_\_\_

STATE OF OHIO )  
 ) SS:  
COUNTY OF GREENE )

BEFORE ME, a Notary Public in and for said County and State, personally appeared the above named CITY OF BEAVERCREEK, OHIO by \_\_\_\_\_, its \_\_\_\_\_, who acknowledged that such officer did sign the foregoing instrument and that the same is the free act and deed as such officer of such city.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal this \_\_\_\_\_ day of \_\_\_\_\_, 2019.



"OWNER"  
GREENE INNKEEPERS, LLC

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF \_\_\_\_\_ )

)

SS:

COUNTY OF \_\_\_\_\_ )

BEFORE ME, a Notary Public in and for said County and State, personally appeared the above named GREENE INNKEEPERS, LLC by \_\_\_\_\_, its \_\_\_\_\_, who acknowledged that such officer did sign the foregoing instrument and that the same is such officer's free act and deed as such officer and of said company.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

\_\_\_\_\_  
Notary Public

"INVESTOR"  
PACE EQUITY LLC

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF \_\_\_\_\_ )

COUNTY OF \_\_\_\_\_ )

SS:

BEFORE ME, a Notary Public in and for said County and State, personally appeared the above named PACE EQUITY LLC by \_\_\_\_\_, its \_\_\_\_\_, who acknowledged that such officer did sign the foregoing instrument and that the same is such officer's free act and deed as such officer and of said limited liability company.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

\_\_\_\_\_  
Notary Public

This instrument prepared by:  
Caleb Bell  
Bricker & Eckler LLP  
100 South Third St.  
Columbus, Ohio 43215

FISCAL OFFICER'S CERTIFICATE

The undersigned, Fiscal Officer of the City of Beavercreek, Ohio, hereby certifies that the City has established a special assessment fund, into which the Special Assessments (as that term is defined in the foregoing Agreement) received by the City shall be deposited, free from any previous encumbrances. The City shall use the moneys deposited in such special assessment fund to meet its obligations under the foregoing Agreement. This Certificate is given in compliance with Ohio Revised Code Sections 5705.41 and 5705.44.

Dated: [\_\_\_\_], 2019

\_\_\_\_\_  
Fiscal Officer  
City of Beavercreek, Ohio

EXHIBIT A

DESCRIPTION OF ASSESSED LANDS

[Insert Legal Description]

EXHIBIT B

OWNER CONSENT

(Affidavit of Facts Relating to Title Made Pursuant to O.R.C. §5301.252)

The undersigned, \_\_\_\_\_, having been duly cautioned and sworn, deposes and states as follows:

The undersigned is the \_\_\_\_\_ of Greene Innkeepers, LLC, an Ohio limited liability company (the "Owner").

This Owner Consent, dated as of \_\_\_\_\_, 2019, is given by the Owner pursuant to the Special Assessment Agreement dated as of \_\_\_\_\_, 2019 (the "Agreement") by and among the County Treasurer of Greene County, Ohio (the "Treasurer"), the City of Beavercreek, Ohio (the "City"), the Beavercreek Energy Special Improvement District (the "District"), PACE Equity LLC (together with its permitted successors and assigns under the Agreement, the "Investor"), and the Owner. Terms not otherwise defined herein shall have the meaning ascribed to such terms in the Agreement.

The Agreement provides for an accelerated foreclosure process with respect to certain Special Assessments which have been levied on the Assessed Lands by the City in order to pay the costs of special energy improvement projects under Ohio Revised Code Chapter 1710. The Assessed Lands are described in Exhibit 1 to this Owner Consent, and the Special Assessments are disclosed on Exhibit 2 to this consent.

The Agreement further provides that if an event of default occurs and is continuing with respect to a required semi-annual payment of Special Assessments or an "Event of Default" (as that term is defined in the Energy Project Cooperative Agreement, as appropriate) under the Energy Project Cooperative Agreement occurs and is continuing, the Treasurer will pursue an accelerated foreclosure of the lien of the Special Assessments, all as provided in the Agreement. In consideration of the Project Advance to finance the Project, the Owner hereby consents to the accelerated foreclosure process with respect to the lien of the Special Assessments then due and owing with respect to the Assessed Lands, as provided in the Agreement.

The Owner is the owner of the Assessed Lands. The Owner covenants and agrees that so long as the Project Advance remains outstanding, except as the covenant may be released by the District and the Investor, as applicable, in writing, the accelerated foreclosure process established pursuant to the Agreement shall be a covenant on and running with, and shall be binding upon, the Assessed Lands, the Owner and all future owners of the Assessed Lands. Any release, modification or waiver of the covenant running with the land by the District, or the Investor, as applicable, shall be filed of record with the Greene County, Ohio Recorder's Office. The Owner agrees that this Owner Consent shall be recorded with the Greene County, Ohio Recorder's Office and the Owner covenants and agrees to record such documents and to take such reasonable steps as are necessary, so that the accelerated foreclosure process with respect to the



lien of the Special Assessments is a covenant on and running with the Assessed Lands and is binding on the Owner and any and all future owners of all or any portion of the Assessed Lands.

The Special Assessments have been levied by the City and certified to the County Auditor for placement on the tax list and duplicate and collection with and in the same manner as real property taxes as special assessments binding against the Assessed Lands in each of the years disclosed in the schedule of Special Assessments attached to this Owner Consent as Exhibit 2. Unless earlier paid by the Owner or any successor in interest of the Owner to the Assessed Lands, the Special Assessments shall be levied, billed, due and payable, and collected in each of the years in each of the amounts disclosed on Exhibit 2.

Anything in this Owner Consent to the contrary notwithstanding, this Owner Consent shall in no way be construed as a waiver by the Owner of its statutory right of redemption, including the full applicable redemption period.

(Signature Page Immediately Follows)

Further affiant sayeth naught.

“OWNER”

**GREENE INNKEEPERS, LLC**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF \_\_\_\_\_ )

) SS:

COUNTY OF \_\_\_\_\_ )

BEFORE ME, a Notary Public in and for said County and State, personally appeared the above named GREENE INNKEEPERS, LLC by \_\_\_\_\_, its \_\_\_\_\_, who acknowledged that he did sign the foregoing instrument and that the same is such officer's free act and deed as such officer and of said company.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

\_\_\_\_\_  
Notary Public

This instrument was prepared by:

J. Caleb Bell, Esq.  
Bricker & Eckler LLP  
100 South Third Street  
Columbus, Ohio 43215

EXHIBIT 1

DESCRIPTION OF ASSESSED LANDS

[Insert Legal Description]

EXHIBIT 2

SCHEDULE OF SPECIAL ASSESSMENTS

<b>Special Assessment Payment Date*</b>	<b>Special Assessment Payment Amount**</b>
1/31/2020	\$124,136.50
7/31/2020	\$124,136.50
1/31/2021	\$124,136.50
7/31/2021	\$124,136.50
1/31/2022	\$124,136.50
7/31/2022	\$124,136.50
1/31/2023	\$124,136.50
7/31/2023	\$124,136.50
1/31/2024	\$124,136.50
7/31/2024	\$124,136.50
1/31/2025	\$124,136.50
7/31/2025	\$124,136.50
1/31/2026	\$124,136.50
7/31/2026	\$124,136.50
1/31/2027	\$124,136.50
7/31/2027	\$124,136.50
1/31/2028	\$124,136.50
7/31/2028	\$124,136.50
1/31/2029	\$124,136.50
7/31/2029	\$124,136.50
1/31/2030	\$124,136.50
7/31/2030	\$124,136.50
1/31/2031	\$124,136.50
7/31/2031	\$124,136.50
1/31/2032	\$124,136.50
7/31/2032	\$124,136.50
1/31/2033	\$124,136.50
7/31/2033	\$124,136.50
1/31/2034	\$124,136.50
7/31/2034	\$124,136.50
1/31/2035	\$124,136.50
7/31/2035	\$124,136.50
1/31/2036	\$124,136.50
7/31/2036	\$124,136.50
1/31/2037	\$124,136.50
7/31/2037	\$124,136.50

1/31/2038	\$124,136.50
7/31/2038	\$124,136.50
1/31/2039	\$124,136.50
7/31/2039	\$124,136.50
1/31/2040	\$124,136.50
7/31/2040	\$124,136.50
1/31/2041	\$124,136.50
7/31/2041	\$124,136.50
1/31/2042	\$124,136.50
7/31/2042	\$124,136.50
1/31/2043	\$124,136.50
7/31/2043	\$124,136.50
1/31/2044	\$124,136.50
7/31/2044	\$124,136.50
1/31/2045	\$124,136.50
7/31/2045	\$124,136.50

\* Pursuant to Ohio Revised Code Chapter 323, the Special Assessment Payment Dates identified in this Exhibit B are subject to adjustment by the Greene County Auditor under certain conditions.

\*\* Pursuant to Ohio Revised Code Section 727.36, the Greene County Auditor may charge and collect a fee in addition to the amounts listed in this Exhibit B.

interoffice  
MEMORANDUM

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**To:** Beavercreek City Council

**From:** Dianne Miscisin, Clerk of Council

**Subject:** Appointments - Boards, Commissions, and Committees

**Date:** April 19, 2019

Below is a listing of applicants for the Community Reinvestment Area Housing Council. This appointment was postponed at the February 25, 2019 meeting.

There are five applications for four vacancies.

- Keith Ayers
- Pat Barton
- John Compton
- Shannon Graham
- Brian Smith



**CITY COUNCIL**  
**Regular Meeting – May 13, 2019 6:00 p.m.**  
**Council Chambers**

**PROCLAMATIONS**

- ◆ National Police Week
- ◆ Kids to Parks Day
- ◆ National Bike Month

- I. CALL TO ORDER
- II. ROLL CALL
- III. PLEDGE AND PRAYER/MOMENT OF SILENCE – Vice Mayor Garcia
- IV. APPROVAL OF AGENDA
- V. APPROVAL OF MINUTES
- VI. PRE-SCHEDULED PRESENTERS
  - A. Carolyn Tepe, U.S. Census Bureau
  - B. Beavercreek Youth Council Update
- VII. PUBLIC HEARING – PUD 19-1, IH Credit Union
  - A. Applicant Presentation
  - B. Staff Presentation
  - C. Public Input
  - D. Council
  - E. Ordinance 19- \_\_\_\_\_
- VIII. DECISION ITEMS
  - A. Acceptance of First Quarter 2019 Financial Summary
- IX. ORDINANCES, RESOLUTIONS AND PUDS
- X. COUNCIL TIME
- XI. MAYOR'S REPORT
- XII. CITY MANAGER'S REPORT
- XIII. CITIZEN COMMENTS
- XIV. ADJOURNMENT



**AGENDA  
CITY COUNCIL  
Work Session – May 20, 2019 5:00 p.m.  
Council Chambers**

1368 Research Park Dr  
Beavercreek, Ohio

- I. CALL TO ORDER
- II. ROLL CALL
- III. APPROVAL OF AGENDA
- IV. DISCUSSION ITEMS
  - A. Charter Review
  - B. Thoroughfare Plan
  - C. Purchasing Policy
  - D. Travel Policy
  - E. Code of Ordinances 31.01/31.17 Updates
- V. INFORMATIONAL ITEMS
  - A. Col. Glenn Enhancement Plan
- VI. COUNCIL COMMITTEE/EVENT UPDATES
- VII. ADJOURNMENT

DRAFT



# PLANNING DEPARTMENT STATUS REPORT

*April 12, 2019*

## CITY COUNCIL

April 22, 2019

- 

May 13, 2019

- PUD 19-1, IH Credit Union- Beavercreek Branch, first reading

May 28, 2019

- PUD 19-1, IH Credit Union- Beavercreek Branch, second reading

June 10, 2019

- PUD 19-1, IH Credit Union- Beavercreek Branch, third reading

Tabled / Delayed / Pending

- PC 19-3, Thoroughfare Plan, public hearing

## PLANNING COMMISSION

May 1, 2019

- PUD 06-3 SSP #4, Homestead Village, public hearing (Tabled until May meeting.)

Tabled / Delayed / Pending

- PC 19-2 ASRA, Zip's Car Wash, public hearing (Tabled indefinitely)

Commercial Permits Submitted and Under Review

- Dollar General
- Noah's Event Venue
- Dunkin Donuts

## BOARD OF ZONING APPEALS

May 8, 2019

- V-19-1, Cherry Hill Shopping Center, 3979 Indian Ripple Road
- V-19-2, William Daniels Jr., 2154 Marchfield Way

Currently Tabled or Delayed

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-